

**CONTRACT  
FOR  
PARKING SERVICES  
(REVENUE SHARING MODEL)  
BETWEEN  
THE TEXAS FACILITIES COMMISSION  
AND  
HBA PARKING SYSTEM, INC.**

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Blvd., Austin, Texas 78701 and HBA Parking System, Inc. (hereinafter referred to as "Contractor"), located at 807 Brazos Street, Suite 314, Austin, Texas 78701 enter into the following contract for parking services (hereinafter referred to as the "Contract") pursuant to TEX. GOV'T CODE ANN. Ch. 2165 (Vernon 2012 & Supp. 2015).

**I. STATEMENT OF WORK.**

1.01 **SERVICE REQUIREMENTS.** (a.) Contractor shall provide parking and special events management services at specified parking lots, open ground areas, reserved garage parking and reserved short term tailgate areas (hereinafter referred to individually as "Facility" or collectively as "Facilities") as described in Exhibit A – Parking Facilities, attached hereto and incorporated herein for all purposes. Contractor understands and agrees that all services performed pursuant to this Contract shall be in compliance with Exhibit B - TFC's Commercial Parking and Special Events Policies (hereinafter referred to as "CPSE Policies") and Exhibit B-1 – TFC's Parking Contractor Payment Processing (hereinafter referred to as "Contractor Payment Processing Procedures"), attached hereto and incorporated herein for all purposes. Any deviation by Contractor from fully complying with all CPSE Policies and all Contractor Payment Processing Procedures is prohibited, except in the event that Contractor has sought and obtained TFC's prior written agreement to waive the application of CPSE Policies, and/or Contractor Payment Processing Procedures, as applicable, that would otherwise apply.

The amounts that Contractor is permitted to charge for parking at the Facilities pursuant to this Contract for each of the categories of events are set forth in Exhibit C - Limitations on Amounts Chargeable for Parking, attached hereto and incorporated herein for all purposes.

1.02. **PARKING FEE COLLECTION SYSTEM.** (a.) Contractor shall provide and utilize an integrated parking management system which allows for the payment of parking with cash or through electronic means including, but not limited to: credit cards, debit cards and smart phones. The integrated parking system shall be secure and able to provide detailed reports of all transactions for invoicing and auditing purposes that include, but are not limited to, the following:

- (i.) tracking the number of paying customers per event; and,
- (ii.) tracking the number of State employees, per event, that were authorized to park free of charge.

(b.) TFC retains the right to require that Contractor make changes to its integrated parking management system that are necessary or advisable to assist in improving the security and integrity of the system.

**1.03. EQUIPMENT AND SUPPLIES.** Contractor shall provide equipment, operating supplies and other materials as needed for the operation of parking management and maintenance of the Facilities.

(a.) Prior to bringing any equipment or supplies onto the Facilities, Contractor shall obtain written approval from TFC.

(b.) Contractor shall provide professional signs for the following: (i.) parking rates; (ii.) open or full status; (iii.) the TFC website, to which customer complaints may be submitted; and, (iv.) other operational information as may be required. All signs shall be clearly posted at each entrance and/or exit. Prior to Contractor's use of any signage, Contractor shall submit to TFC a photo of each proposed sign and receive TFC's written approval for each sign.

(c.) Contractor shall remove all temporary signs and barricades that are blocking entrances and/or exits of the Facilities at the end of each event. With prior approval by TFC, Contractor may store the items in non-parking areas of the Facility to be removed at a later time.

(d.) Prior to making any improvements, installing any semi-permanent equipment or erecting any temporary structures at any Facility, Contractor must obtain written approval from TFC. Upon expiration of the Contract, Contractor shall remove any improvements or temporary structures, unless otherwise directed and amended by TFC. Contractor shall be responsible, at no cost to TFC, for repairing any damages to Facilities caused by the installation and removal of such improvements or temporary structures.

(e.) TFC shall not be held responsible for any loss or damage to Contractor's equipment or supplies.

(f.) Without limitation, Contractor is responsible for all costs associated with the installation, operation, maintenance and removal of all equipment utilized in the performance of this Contract.

**1.04. SPECIAL MANAGEMENT AND SERVICES AT UNIVERSITY OF TEXAS FOOTBALL TAILGATING EVENTS.** Contractor shall be required to provide additional staff and perform specialized duties at scheduled University of Texas (hereinafter referred to as "UT") tailgating events held at or nearby the Facilities. In performing its duties, Contractor will ensure that its plans and actions are communicated timely to TFC and carried out in coordination with TFC's performance of its duties related to tailgating events.

(a.) Contractor will manage advance permit sales for all Facilities, as described in Exhibit A – Parking Facilities. Contractor shall collect payment and prepare and manage the distribution of reserved tailgate space permits for tailgating events.

(b.) Contractor will prepare first come–first served parking permits for closed lots, open ground areas and reserved short term tailgate areas. Prior to the start of the tailgating season, TFC will inform Contractor of all unsold spaces in these areas. Beginning at 6:00 p.m.

on the day before a UT home football game, Contractor shall sell these spaces on a first come–first served basis. The permit issued shall include the date and space number. Upon selling the parking or open ground area space, Contractor shall present the purchaser with a permit. Contractor shall inform the purchaser that the permit must be presented to the parking attendant at the entrance to the lot and displayed on the dashboard of the vehicle utilizing the space at all times.

(c.) On the day of UT home football games, Contractor shall provide permits at all Facilities which have available parking spaces. Contractor shall sell those available spaces on a first come–first served basis. Contractor shall communicate to all permit purchasers that their permits must be prominently displayed within their vehicle at all times while the vehicle is in the Facility during a special event. Contractor shall monitor all Facilities periodically, but no less frequently than hourly, during each special event in order to identify any vacant unreserved spaces available for purchase.

(d.) By 5:30 p.m. on the day before a UT home football game, Contractor shall provide adequate staff to man the entrances of all Facilities, in order to begin selling spaces and admitting vehicles, at 6:00 p.m., which have obtained an appropriate permit. Contractor shall secure the reserved lots before leaving at 10:00 p.m. and shall return at 7:00 a.m. on game day. Contractor’s personnel shall remain at the entrances of all Facilities to sell parking permits or distribute pre-purchased permits. If a Facility is sold out, Contractor shall secure the Facility by placing signs to indicate the Facility is full and blocking off the entrances and exits. Contractor’s personnel shall also ensure that vehicles and tailgaters in all Facilities have permits and no vehicles or tailgaters gain access without a permit.

(e.) Contractor shall be responsible for the provision of garbage dumpsters for all UT tailgating events in accordance with Exhibit D – Garbage Dumpster Location Map, attached hereto and incorporated herein for all purposes, and for ensuring that all dumpsters are delivered and picked up in a timely manner. TFC shall designate the size, number, location, delivery and pick-up times for each dumpster.

(f.) Contractor shall be responsible for providing 59 regular and 1 handicap accessible portable toilets with one pick-up service for UT football tailgating events. TFC shall designate the number, location, and delivery, service and pick-up times for each portable toilet.

(g.) Contractor shall be responsible for providing a 350 linear feet chain-link temporary fence to be placed between 18<sup>th</sup> Street and MLK Jr. Blvd. on Congress Avenue at the West side of Lot 7 for UT football tailgating events. TFC shall designate the delivery and pick-up times for the fence.

1.05. **MAINTENANCE.** Contractor shall clean and remove garbage at each Facility used during each tailgating or other special event. Cleaning shall include the removal of all types of debris, including human waste, regardless of size or composition. Contractor shall utilize manual and/or mechanical scrubbing, power washing or other methods and tools to sanitize the Facility in order to remove debris.

(a.) Cleanup shall be completed no later than 6:00 a.m. after each special event except for UT football tailgating events. Cleanup for UT football tailgating events shall commence no later than noon on the day following the game and shall be complete no later than 6:00 a.m. of the following day.

(b.) At the completion of each event, Contractor shall walk and clean the Facilities in their entirety, including parking areas, stairways, elevators, sidewalks and grounds.

(c.) Contractor shall remove and dispose of the garbage from each garbage container in each Facility and insert a clean garbage container liner.

(d.) Contractor's personnel performing maintenance duties shall utilize personal protective equipment appropriate for each task performed.

(e.) Contractor agrees to maintain the Facilities and any other improvements thereon in as good a condition in which they were delivered, allowing for reasonable wear and tear. Contractor shall immediately inform TFC of any defects in conditions or operation of the Facilities. Any malfunction or damage requiring emergency action shall be reported immediately to TFC's 24 hour Operations Hotline.

(f.) Contractor shall immediately deliver to the Contract Administrator any items of value that are found in or around any of the Facilities.

1.06. **REPORTING.** Contractor shall collect, track and submit information to TFC as more fully described below. Contractor reports and other submissions by Contractor to TFC are to be transmitted to TFC via email. TFC may, in its sole discretion, direct Contractor to provide a hard copy of any submission in addition to the submitted electronic copy. TFC reserves the right to add, delete or change the reporting requirements listed below.

(a.) **Weekly Revenue Reports.** Contractor shall compile a "Weekly Revenue Report" that shall be submitted electronically to TFC on a weekly basis. The Weekly Revenue Report is due no later than 5:00 PM on Tuesday of every week. For the purpose of compiling these reports, a week ends on Sunday at midnight. The Weekly Revenue Reports shall be formatted in Excel and shall include, but not be limited to, the following:

- (i.) Facility name and address;
- (ii.) day of the week;
- (iii.) number of vehicles parked in each Facility;
- (iv.) gross revenue collected;
- (iv.) TFC's share of the gross amount collected;
- (vi.) Contractor's share of the gross amount collected; and,
- (vii.) sales tax of the remaining portion of Contractor's share of the gross amount

collected.

(b.) Contractor Personnel Report. Contractor shall maintain data on its personnel and submit a "Contractor Personnel Report" to TFC every three (3) months, beginning with the first full three (3) month period following the execution of this Contract. The report shall be submitted to TFC on or before the 10<sup>th</sup> calendar day of the first month following the three month period being reported. TFC may, in its sole discretion, direct that Contractor provide a Contractor Personnel Report to TFC on a more or less frequent basis than quarterly, and/or on a one-time basis, if TFC believes such information to be of assistance in maintaining the integrity of the State's commercial parking operations. The report shall include, but not be limited to, the following:

- (i.) names of each employee who worked for Contractor at TFC Facilities;
- (ii.) employee's current active or inactive work status;
- (iii.) employee's date of hire and/or termination;
- (iv.) employee's driver's license number; and,

(v.) date the employee cleared TFC's criminal background check, as described in Section 4.02 below.

(c.) Yearly Advance Tailgate Revenue Report. Before each UT tailgating season Contractor shall submit a report detailing pre-paid tailgating revenue. The report shall be submitted electronically on the third 3<sup>rd</sup> calendar day following the closure of the advanced reservation period, which will be established annually by TFC. The report shall include, but not be limited to, the following:

- (i.) quantity of tailgate spaces sold;
- (ii.) identification number for each sold space;
- (iii.) Facility in which the space is located;
- (iv.) gross revenue collected;
- (iv.) TFC's share of the gross amount collected;
- (vi.) Contractor's share of the gross amount collected; and,

(vii.) sales tax of the remaining portion of Contractor's share of the gross amount collected.

1.07. CONTRACT ADMINISTRATOR. (a.) TFC shall designate a "Contract Administrator" for this Contract who will serve as the point of contact between TFC and Contractor. The instructions of the Contract Administrator and/or the Contract Administrator's designated representative (hereinafter collectively referred to as "Contract Administrator") are to be strictly and promptly followed by Contractor at all times. The Contract Administrator is to have free

access to Contractor's supplies, equipment, and work product at all times for inspection and audit. Contractor is to afford the Contract Administrator all necessary assistance during those inspections and/or audits. The Contract Administrator will decide any and all questions that may arise as to the quality and acceptability of work performed, and as to the compliance of Contractor's performance with the terms of this Contract, TFC's CPSE Policies and the Contractor Payment Processing Procedures. Failure of the Contract Administrator during the progress of the Contract to: (i.) discover or reject unacceptable work; (ii.) discover work not in accordance with the Contract; or, (iii.) failure to exercise any remedies in connection therewith shall not be deemed an acceptance thereof, nor a waiver of TFC's right to full performance of the Contract.

(b.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the Contract Administrator. Contractor understands and agrees that any other service performed without the prior written direction of the Contract Administrator is work outside the scope of this Contract and shall be performed exclusively at Contractor's risk and own expense.

1.08. **EXISTING UTILITIES AND STRUCTURES.** Contractor shall adequately protect TFC's property, adjacent property and the public. In the event of damage to Facilities as a result of Contractor's operations, Contractor shall take immediate steps to notify the Contract Administrator and subsequently repair or restore all services and Facilities to the satisfactory approval of the Contract Administrator. Further, Contractor shall engage any additional outside services which may be necessary to facilitate repairs until services and Facilities are restored. All costs involved in making repairs and restoring disrupted services and Facilities shall be borne by Contractor, and Contractor shall be fully responsible for any and all claims resulting from the damage.

1.09. **SECURITY.** Contractor shall be solely responsible for the security of its personnel, equipment, materials, and collected revenue. TFC shall not be held liable for any loss or damage to Contractor's equipment or materials or injury or death of Contractor's personnel.

Contractor acknowledges that for some special events, Contractor may need to hire security or off-duty law enforcement officers to monitor cash collections, keep the peace, direct traffic, and ensure the safety of Contractor's employees.

1.10. **SMOKING.** All Facilities where work is to be performed are nonsmoking buildings. Contractor employees are prohibited from smoking in all areas except in areas designated for smoking.

## II. TERM.

2.01. **CONTRACT AWARD.** (a.) This Contract shall be effective as of January 1, 2016, and shall expire on August 31, 2017, unless extended by the parties by amendment to this Contract or terminated earlier, as provided in Section 2.03 below. This Contract may be renewed for two (2) additional two (2) year periods, provided that renewal is executed by written amendment to this Contract prior to expiration of the current term. Any renewals shall be at the same terms and conditions, plus any approved changes.

(b.) Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records right to audit and independent audit, property rights, dispute resolution, invoice and fees verification and default shall survive the termination or expiration dates of this Contract.

2.02. **WORKING HOURS.** (a.) State garages and parking lots are utilized for State employee parking until 6:00 p.m., Monday thru Friday. Contractor shall not sell parking spaces prior to 6:00 p.m., Monday through Friday, unless authorized in writing by TFC.

(b.) Garages L and N are to be open and staffed weekly, Wednesday through Saturday, starting at 5:30 p.m. and on other days of the week during special events. Parking patrons must remove their vehicles from these garages by 3:00 a.m., Monday through Friday.

(c.) Contractor shall fully staff UT tailgate Facilities beginning at 5:30 pm on the day before each UT home football game, and continue staffing duties until 10:00 p.m. Contractor shall fully staff all locations beginning at 7:00 a.m. on game day, and remain fully staffed at all locations until one hour after the completion of the game. Contract Administrator may provide revised times to Contractor based on game day updates (i.e. weather, game time).

(d.) Contractor shall conduct its own research of upcoming events with details shared with TFC, and prepare and submit a monthly calendar to TFC reflecting those events for which Contractor intends to sell parking spaces at any one or more Facilities. The monthly calendar shall be provided to TFC no later than one week prior to the beginning of the applicable month. Prior written approval by TFC is required in order for the Contractor to sell parking at any given event.

2.03. **TERMINATION.** (a.) **Termination with Default.** TFC may terminate this Contract immediately for default by providing written notice to Contractor of such termination if Contractor fails to execute the work properly, performs work in an unsatisfactory manner or fails to perform any provision of the Contract. In the event of abandonment or default, Contractor will be responsible for paying damages to TFC, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or TFC resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the scope of work is significantly changed.

(b.) **Termination without Default.** TFC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (hereinafter referred to as "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TFC under this subsection, Contractor shall be governed by the terms and conditions and shall perform the acts outlined in the following Section 2.03(c.)

(c.) **Implementation of Termination.** Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary as determined by the Contract Administrator to preserve the work in progress and to protect materials, properties, and equipment. TFC shall pay Contractor for all work satisfactorily performed up to the effective

date of termination or reduction in the statement of work in accordance with the prices included in the statement of work.

(d.) Termination by Contractor. Contractor may terminate the Contract upon providing one hundred eighty (180) days written notice to TFC. In the event of termination by Contractor, Contractor shall be governed by the terms and conditions of this Contract and shall perform the acts outlined in Section 2.03(c.) above. Contractor will be held responsible for additional cost incurred by TFC from the termination of this Contract, including but not limited to the re-solicitation of the services covered by this Contract.

2.04. UNSATISFACTORY PERFORMANCE. If Contractor fails to maintain an acceptable level of service, or if in the judgment of the Contract Administrator, Contractor's methods are not adequate to ensure completion of all required services per the terms of this Contract, the Contract Administrator may direct Contractor, at no additional cost to TFC, to revise work schedules or manpower/man-hours to ensure completion of the services. Failure to perform any of the obligations in this Contract may be considered nonperformance of services and may result in informal corrective actions, formal corrective action plans, withholding of payment, removal of a Facility and/or termination of this Contract. TFC may consider the following as unsatisfactory performance:

- (a.) failure to provide approved, qualified and adequate staffing;
- (b.) failure to provide required reports;
- (c.) any material violation of the terms of this Contract;
- (d.) failure to provide the lists, logs, and/or other deliverables required under this Contract;
- (e.) failure to maintain the Facilities and related equipment as required under this Contract;
- (f.) display of unethical behavior by any Contractor employee or subcontractor employee while engaged in the performance of services under this Contract; and,
- (g.) failure to promptly correct other performance deficiencies that have been identified by Contract Administrator and communicated to Contractor.

2.05. CORRECTIVE ACTION PLAN. (a.) If TFC identifies one or more instances of Contractor's unsatisfactory performance, based on any of the circumstances set forth in Section 2.04 above or otherwise based on Contractor's obligations under this Contract, the Contract Administrator may request a corrective action plan (hereinafter referred to as "Corrective Action Plan") from Contractor by notifying Contractor in writing of the issue(s) which constitute unsatisfactory performance, and direct Contractor to provide a written Corrective Action Plan. Contractor shall deliver a Corrective Action Plan within ten (10) business days of Contract Administrator's notification, and such plan shall be subject to written approval by the Contract Administrator. The Corrective Action Plan shall address how Contractor will correct the instances of unsatisfactory performance identified by TFC, and provide that Contractor shall, unless otherwise approved in advance by the Contract Administrator, complete

all actions set forth in the Corrective Action Plan no later than thirty (30) calendar days following Contractor Administrator's approval of the Corrective Action Plan. Failure to correct all identified elements of unsatisfactory performance included in the notice requesting the Corrective Action Plan within the time as set forth in this paragraph, shall entitle TFC to avail itself of one or more of the following remedies at TFC's sole discretion:

- (i.) removal of one or more Facilities from the scope of this Contract; or,
- (ii.) termination of this Contract.

(b.) If Contractor is required to deliver and perform more than one (1) Corrective Action Plan within any period of twelve (12) continuous months during the term of this Contract, and regardless of whether or not Contractor successfully completes such Correction Action Plans, TFC may consider such conduct to amount to Contractor's continuing material nonperformance of services under this Contract. In such an event, TFC shall be entitled to avail itself of one or more of the following remedies: at TFC's sole discretion:

- (i.) removal of one or more Facilities from the scope of this Contract;
- (ii.) imposition of liquidated damages on Contractor in an amount equal to ten percent (10%) of Contractor's share of gross parking revenue under this Contract, as determined after the deduction of sales taxes due, for the four (4) week period ending on the date TFC first notified Contractor of the need for the primary Correction Action Plan, which amount shall be paid by Contractor to TFC along with the next payment of TFC's share of such gross parking revenue; and/or,
- (iii.) termination of this Contract.

2.06. **NO LIABILITY UPON TERMINATION.** If this Contract is terminated for any reason, TFC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.

### III. CONSIDERATION.

3.01. **CONSIDERATION PAYABLE BY CONTRACTOR TO TFC.** As consideration for TFC's agreement to grant to Contractor the rights under this Contract, including but not limited to, the right to share in the gross revenue collected by Contractor for parking charges for events occurring during the term hereof at or near one or more of the Facilities, Contractor agrees to share the amount of gross revenue it collects with TFC according to the percentages set forth in Exhibit E – Consideration to be Paid By Contractor to TFC. The amount due from Contractor to TFC shall be calculated and paid to TFC on a weekly basis.

3.02. **ADDITIONAL SERVICES AND ADJUSTMENTS.** (a.) "Additional Services" are those services not included in Article I of this Contract which may be requested by TFC at any time for the duration of this Contract. Upon request by TFC for Additional Services, Contractor shall prepare and submit to TFC a proposal for such services requested. Additional Services for which TFC engages Contractor shall be documented by Delivery Release to this Contract.

(b.) Such requests for Additional Services shall be documented by a Delivery Release Change Notice (hereinafter referred to as a "Delivery Release"). Each Delivery Release will constitute an amendment to this Contract, subject to the terms and conditions set forth in this Contract, and shall include a description of the scope of services, schedule and term, and compensation specific to the Delivery Release which shall be negotiated at the time of such Delivery Release. Any Additional Services completed by Contractor without a Delivery Release will not be paid for by TFC.

3.03. **PAYMENTS TO CONTRACTOR.** (a.) Payments to Contractor as a result of Additional Services will be made within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by TFC. Contractor will be paid for completion of work accepted and approved by TFC's Contract Administrator.

(b.) For any Additional Services for which TFC engages Contractor, Contractor shall invoice TFC for work performed by vendor identification number, the relevant Facility(ies) involved, purchase order number and delivery release number. Invoices must include the purchase order number and provide reasonable detail as to amounts of labor and materials furnished and the basic components, such as hourly rate and/or per item cost, used in calculating the total charges. Additionally, invoices for any materials purchased, subcontractors utilized or payment and performance bonds required for each project must be provided. Address for submission is: Texas Facilities Commission, Accounts Payable, P.O. Box 13047, Austin, Texas 78711-3047 or [accountspayable@tfc.state.tx.us](mailto:accountspayable@tfc.state.tx.us).

#### IV. CONTRACTOR PERSONNEL.

4.01. **PERSONNEL.** (a.) Contractor shall be responsible for staffing and managing the Facilities identified by TFC in Exhibit A – Parking Facilities. Contractor shall select qualified, competent and courteous personnel to properly manage, operate, maintain and monitor the Facilities and provide parking and special events management. Without limitation, Contractor will take all steps necessary and appropriate to ensure that the following conditions are met:

(i.) parking attendants shall be immediately visible as cars approach to park;

(ii.) an appropriate number of Contractor staff are available to ensure spaces sold prior to or during special events are not compromised by someone entering a Facility without a permit;

(iii.) all Facility entrances and/or exits that are not being utilized are blocked off, and additional Facilities are opened and monitored as needed; and,

(iv.) a sufficient number of Contractor staff are available during large events to collect fees and to direct vehicles where specifically to park.

(b.) Contractor shall be responsible for training, supervision and management of all personnel employed by Contractor during performance of this Contract.

(c.) All Contractor employees performing services at any event covered by this

Contract must wear uniforms displaying Contractor's logo and displaying reflective material or such that the employee is easily and immediately identifiable.

(d.) Contractor shall promptly investigate and correct conditions which give rise to a customer complaint including Contractor employee's conduct, demeanor or appearance. TFC reserves the right to require specific changes in Contractor's staffing.

4.02. **GENERAL AND CRIMINAL BACKGROUND CHECKS.** (a.) Contractor represents and warrants that Contractor and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TFC as to the facts and circumstances surrounding the conviction.

(b.) Contractor's employees and subcontractors that will complete any work under this Contract will be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Contractor. A complete criminal background check shall be completed before any employee performs services at a Facility, and may be requested at any time thereafter. Criminal background checks must be accomplished by the Texas Department of Public Safety ("DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of Contractor's employees and/or subcontractors, DPS or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in Exhibit F - Criminal Background Check and Application Guidelines, attached hereto and incorporated herein for all purposes.

4.03. **E-VERIFY.** (a.) By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of:

(i.) all persons employed to perform duties within the State of Texas, during the term of the Contract; and

(ii.) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

(b.) Contractor shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Contract.

(c.) For persons not eligible for E-Verify screening, Contractor (including subcontractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

4.04. **CONTRACTOR ACCESS.** Access routes, entrance gates or doors, parking and storage areas and any imposed time limitations shall be designated by the Contract Administrator. Contractor shall conduct operations in strict observation of the access routes and other areas established as described above. Under no circumstances shall any of Contractor's personnel, vehicles, or equipment enter or move upon any area not authorized by the Contract Administrator for access by Contractor. Upon the approval of the Contract Administrator, Contractor shall have the right to utilize air, water, gas, steam, electricity, and similar items of expense from existing outlets at TFC property.

4.05. **CONTRACTOR PARKING.** Parking for Contractor vehicles when performing work, must be coordinated through the Contract Administrator. Contract Administrator will arrange parking according to parking availability at the job site. Parking in close proximity to the project may not be possible. Subcontractors may be required to utilize remote parking and carpooling when space is not available.

4.06. **CONTRACTOR COOPERATION.** (a.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the Contract Administrator. No work, installation or other services shall be undertaken by Contractor except with the prior written direction of the Contract Administrator.

(b.) Contractor understands and agrees that work, installation or any other service performed without the prior written direction of the Contract Administrator is work outside the scope of this Contract and shall be performed exclusively at Contractor's risk.

(c.) Contractor agrees to cooperate and coordinate its work with that of other Contractors retained by owner. Upon discovery of an apparent conflict in the sequencing of work with another Contractor, Contractor shall report the concern to the Contract Administrator who will resolve the conflict.

## V. STATE FUNDING.

5.01. **STATE FUNDING.** (a.) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of TEX. CONST. art. III, § 49. In compliance with TEX. CONST. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

(b.) Furthermore, any damages due under this Contract should not exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach; **provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.**

## VI. RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE.

6.01. **SUPPORTING DOCUMENTS, RETENTION; RIGHT TO AUDIT; INDEPENDENT AUDITS.** (a.) Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract were expended in accordance with the laws and

regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Contract. Contractor and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TFC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

(b.) Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. The acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

6.02. **CONFIDENTIALITY.** Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is:

- (a.) confidential by law;
- (b.) marked or designated "confidential," or words to that effect, by TFC; or,
- (c.) information that Contractor is otherwise required to keep confidential by this Contract.

6.03. **PUBLIC RECORDS.** Notwithstanding any provisions of this Contract to the contrary, Contractor understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, Contractor shall cooperate with TFC in the production of documents responsive to the request. Contractor agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Contractor may request that TFC seek an opinion from the Office of the Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, Contractor shall notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Contract and/or any amendment to this Contract. This Contract and/or any amendment to this Contract and all data and other information generated or otherwise obtained in its performance is subject to the Texas

Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

6.04. **PUBLIC DISCLOSURE.** No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of TFC.

## **VII. CONTRACTOR'S RESPONSIBILITIES AND WARRANTIES.**

7.01. **CONTRACTOR RESPONSIBILITIES.** Contractor shall be responsible for damage to TFC's Facilities and all associated systems by its work, its negligence in work, its personnel, or its equipment by Contractor's or subcontractors staff. Contractor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for TFC.

7.02. **PERFORMANCE STANDARDS.** (a.) All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and shall comply with all federal, state, and local laws, rules, codes and ordinances.

(a.) All Facilities where work is to be performed are professional environments. Contractor employees using inappropriate language or behaving in an inappropriate manner will be asked to leave the premises and documented by the Contract Administrator.

(b.) Contractor shall provide temporary restrooms or portable toilets unless otherwise designated. It is recommended that a separate woman's toilet be provided. Use of only these Facilities will be enforced by Contractor. Toilets will be located with consideration of adjacent property and maintained on a scheduled basis.

(c.) All Contractor employees on jobsite will:

(i.) wear clean uniforms in good repair daily;

(ii.) keep shirttail tucked in during business hours;

(iii.) bathe daily and be clean at the start of the work day;

(iv.) wash hair daily, comb or brush before starting work and keep trimmed; and,

(v.) be clean shaven or if facial hair is present, keep trimmed.

7.03. **WARRANTY ON SAFETY AND HEALTH REQUIREMENTS.** Contractor shall procure, at Contractor's expense, all necessary and required licenses and permits necessary for the performance of this Contract. Contractor represents and warrants that the services provided under this Contract comply with all applicable federal health and safety standards, including but

not limited to, the Occupational Safety and Health Administration (OSHA), and all Texas health and safety standards.

7.04. **PERFORMANCE WARRANTY.** All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and of local codes and ordinances and any other authority having lawful jurisdiction.

7.05. **NO LITIGATION WARRANTY.** Contractor represents and warrants that it is not currently a party to any litigation or administrative proceeding, which, if decidedly adversely to Contractor, could reasonably have the potential to affect Contractor's ability to fully and completely perform all of its obligations under this Contract. Contractor agrees that in the event any action, event or circumstance occurs, that could be reasonably expected to adversely affect Contractor's ability to fully and timely perform all of its obligations under this Contract, Contractor shall provide written notice to TFC of such action, event or circumstance, and shall continue to update TFC in writing every thirty (30) days thereafter of the status of the action, event or circumstance, until otherwise directed by TFC.

### **VIII. INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS.**

8.01. **INSURANCE.** Prior to the commencement of work under this Contract, Contractor agrees to carry and maintain insurance in the following types and amounts for the duration of this Contract, to furnish certificates of insurance, and make available, at no cost to TFC, copies of policy declaration pages and policy endorsements as evidence thereof:

(a) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers' liability of \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury disease policy limit and \$1,000,000 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(46). Certification in writing from Contractor and subcontractors shall be provided to TFC in accordance with Texas Labor Code, Section 406.096.

(b) Commercial General Liability with a combined single limit of \$1,000,000.00 per occurrence for coverage A and B including products/completed operations, where appropriate, with a separate aggregate of \$2,000,000.00 for bodily injury and for property damages. The policy shall contain the following provisions:

- (i) blanket contractual liability coverage for liability assumed under the Contract;
- (ii) independent contractors' coverage;
- (iii.) State of Texas, TFC, its officials, directors, employees, representatives and volunteers must be listed as additional insureds;
- (iv.) thirty (30) day Notice of Cancellation in favor of TFC; and
- (v.) Waiver of Transfer Right of Recovery Against Others in favor of TFC.

(c.) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per accident for bodily injury and property damage. Alternate acceptable limits are \$500,000 bodily injury per person, \$1,000,000 bodily injury per accident and at least \$500,000 property damage liability per accident. The policy shall contain the following endorsements in favor of TFC:

- (i.) Waiver of Subrogation endorsement;
- (ii.) thirty (30) day Notice of Cancellation endorsement; and
- (iii.) Additional Insured endorsement.

(d.) Umbrella Liability Insurance for an amount of not less than \$1,000,000.00 that provides coverage at least as broad as and applies in excess and follows the form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

8.02. **GENERAL REQUIREMENTS FOR INSURANCE.** (a.) Contractor shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of this Contract and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

(b.) Contractor shall maintain coverage for the duration of this Contract. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Contract. Contractor shall, on at least an annual basis, provide TFC with an insurance certificate as evidence of such insurance. The premium for this extended reporting period shall be paid by Contractor.

(c.) Contractor shall not commence work under this Contract until they have obtained the required insurance and until such insurance has been reviewed by TFC. Contractor shall not allow any subcontractors to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of Contractor hereunder.

(d.) Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.

(e.) TFC shall be an additional insured as its interests may apply on the Commercial General Liability and Business Automobile Liability Policies.

(f.) Contractor shall produce endorsements upon TFC's request to each affected policy:

(i.) naming TFC, P.O. Box 13047, Austin, Texas 78711 as additional insured (except Workers' Compensation and employers' Liability);

(ii.) that obligates the insurance company to notify the TFC Contract Administrator, TFC, P.O. Box 13047, Austin, Texas 78711, of any non-renewal, cancellations or material changes at least thirty (30) days prior to change or cancellation; and,

(iii.) that the "other" insurance clause shall not apply to the State where TFC is an additional insured shown on the policy. It is intended that policies required in this Contract, covering both TFC and Contractor, shall be considered primary coverage as applicable.

(g.) TFC shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

(h.) Contractor shall not cause any insurance required under this Contract to cancel nor permit any insurance to lapse during the term of this Contract.

(i.) TFC reserves the right to review the insurance requirements of this section during the effective period of the Contract and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as Contractor, such adjustments shall be commercially available to Contractor.

(j.) Contractor shall provide TFC thirty (30) days written notice of erosion of the aggregate limit.

(k.) Actual losses not covered by insurance as required by this Contract shall be paid by Contractor.

(l.) Contractor's insurance shall include a waiver of subrogation to TFC for the Workers' Compensation and Employers' Liability, Commercial General Liability, and Business Automobile Liability policies.

**8.03. INDEMNIFICATION. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS TFC AND THE STATE OF TEXAS, THEIR AGENTS AND EMPLOYEES, FROM ALL LIABILITY AND DAMAGES ACTIONS, CLAIMS, DEMANDS OR SUITS FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY TO THE EXTENT CAUSED BY ANY NEGLIGENCE IN THE PERFORMANCE OF THE SERVICES REFERENCED HEREIN AND FROM ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER BOTH FEDERAL AND STATE WORKERS COMPENSATION LAWS, TEXAS TORT CLAIMS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, CHAPTER 101), OR ANY OTHER SUCH LAWS. CONTRACTOR SHALL FURTHER SO INDEMNIFY AND BE RESPONSIBLE FOR ALL DAMAGES OR INJURY TO PROPERTY OF ANY CHARACTER TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT, OMISSION OR MISCONDUCT OF CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, IN THE MANNER OR METHOD OF EXECUTION OF THE SERVICES HEREIN TO BE PERFORMED; OR FROM FAILURE TO PROPERLY PERFORM THE SERVICES TO THE REQUIRED STANDARD STATED HEREIN; OR FROM DEFECTIVE WORK OR MATERIALS; OR FROM BREACH OF ANY REPRESENTATION OR WARRANTY HEREIN. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE**

EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO TFC. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TFC AND/OR THE STATE OF TEXAS ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

8.04. **LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

## IX. CONTRACTOR GENERAL AFFIRMATIONS.

9.01. **FINANCIAL INTERESTS/GIFTS.** (a.) Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Contractor has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

(b.) Pursuant to Texas Government Code Chapter 573 and Section 2254.032, if applicable, Contractor certifies that Contractor knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in Contractor's company or corporation. Contractor further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Contractor will be dealing on behalf of TFC.

9.02. **PRIOR EMPLOYMENT.** Contractor certifies that Contractor shall comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees including "revolving door" provisions. Furthermore, Contractor certifies that if it employs any former employee of TFC, such employee will perform no work in connection with this Purchase Order during the twelve (12) month period immediately following the employee's last date of employment at TFC.

9.03. **ELIGIBILITY.** Pursuant to Texas Government Code Section 2155.004(b), Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

9.04. **FAMILY CODE.** Pursuant to the requirements of Texas Family Code Section 231.006, regarding delinquent child support, the undersigned signatory certifies that the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, Contractor has provided the name and Social Security number of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25% ownership of the business entity entering into this Contract prior to its execution. Contractor acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

9.05. **DEBTS OR DELINQUENCIES TO STATE.** Pursuant to Texas Government Code Section 403.055, Contractor understands and agrees that any payment due under this Contract may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support.

9.06. **BUY TEXAS.** If Contractor is authorized to make purchases under this Contract, Contractor certifies that Contractor will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code Ch. 2155.

9.07. **EQUAL OPPORTUNITY.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. Contractor shall include the above provisions in all subcontracts pertaining to the work.

9.08. **DECEPTIVE TRADE PRACTICE; UNFAIR BUSINESS PRACTICES.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under the Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

9.09. **AGENCY EXECUTIVE HEAD.** Under Texas Government Code Section 669.003 relating to contracting with an executive of a state agency, Contractor represents that no person who, in the past four (4) years, served as an executive of TFC or any other state agency, was involved with or has any interest in this Contract or any contract resulting from this Contractor. If Contractor employs or has used the services of a former executive head of TFC or any other state agency, then Contractor shall provide the following information: the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Contractor and the date of employment with Contractor.

9.10. **LIABILITY FOR TAXES.** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. TFC shall not be liable for any taxes resulting from this Contract.

9.11. **NO CONFLICTS.** Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

9.12. **PROHIBITION ON CERTAIN BIDS AND CONTRACTS.** Under Texas Government Code, Section 2155.006, relating to the prohibition of certain bids and contracts, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. Contractor represents and warrants that during the five (5) year period preceding the date of this Contract, Contractor has not been: (i) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (ii) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

9.13. **IMMIGRATION REFORM.** The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by its contractors and subcontractors. Contractor shall not place any employee of Contractor at a worksite, nor shall Contractor permit any employees, nor any employee of its subcontractor to perform any work on behalf of, or for the benefit of, TFC without first ensuring said employee's authorization to lawfully work in the United States.

9.14. **MINIMUM WAGE RATE REQUIREMENTS.** Notwithstanding any other provision of this Contract, Contractor hereby represents and warrants that the Contractor shall pay to each of its employees a wage not less than what is currently known as the "Federal Minimum Wage" and any increase or amendments thereto. Furthermore, Contractor shall produce proof of compliance with this provision by Contractor to TFC. TFC shall withhold payments due to Contractor until Contractor has complied with this provision. Prior to any payment being made for work satisfactorily completed and accepted, Contractor shall submit Wage Rate Affidavits with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage".

9.15. **NO LITIGATION WARRANTY.** Contractor represents and warrants that it is not currently a party to any litigation or administrative proceeding, which, if decidedly adversely to Contractor, could reasonably have the potential to affect Contractor's ability to fully and completely perform all of its obligations under this Contract. Contractor agrees that in the event any action, event or circumstance occurs, that could be reasonably expected to adversely affect Contractor's ability to fully and timely perform all of its obligations under this Contract, Contractor shall provide written notice to TFC of such action, event or circumstance, and shall continue to update TFC in writing every thirty (30) days thereafter of the status of the action, event or circumstance, until otherwise directed by TFC.

## X. MISCELLANEOUS PROVISIONS.

10.01. **ASSIGNMENT AND SUBCONTRACTS.** (a.) Contractor shall neither assign, transfer, nor delegate any rights, obligations or duties under this Contract without the prior written consent of TFC.

(b.) Notwithstanding this provision, it is mutually understood and agreed that Contractor may subcontract with others for some or all of the services to be performed. TFC shall approve all subcontractors. Subcontractors providing service under this Contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the Contract shall relieve Contractor of responsibility for the service. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:

(i.) Contractors planning to subcontract all or a portion of the work to be performed under this Contract shall identify the proposed subcontractor on Exhibit G – HUB Subcontracting Plan, as further described in Section 10.02 below.

(ii.) Subcontracting shall be at the Contractor's expense.

(iii.) TFC retains the right to check any subcontractor's background and make the determination to approve or reject the use of submitted subcontractors.

(iv.) Contractor shall be the only contact for TFC and subcontractors. Contractor shall list a designated point of contact for all TFC and subcontractor inquiries.

10.02. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS).** In accordance with State law, it is TFC's policy to assist HUBs, whether minority or women owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Contractor's obligations with TFC. If Contractor subcontracts with others for some or all of the services to be performed under this Contract, Contractor shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 as described in Exhibit G – HUB Subcontracting Plan, attached hereto and incorporated herein for all purposes. In addition to information required by Section 10.01 above, Contractor shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on Exhibit G-1 – HSP Progress Assessment Report, attached hereto and incorporated herein for all purposes. PARs shall be submitted monthly with each invoice and are a condition of payment.

10.03. **FEDERAL, STATE AND LOCAL REQUIREMENTS.** Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and

shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

10.04. **PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS.** Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify TFC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without TFC's prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

10.05. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.**(a.) Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in Title 1 of the Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(b.) If applicable, Contractor shall provide the Texas Department of Information Resources ("DIR") with the universal resource locator ("URL") to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractor's not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

10.06. **RELATIONSHIP OF THE PARTIES.** Contractor is associated with TFC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor. Subject only to the terms of this Contract, Contractor shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and TFC shall have no obligation with respect to:

- (a.) withholding of income taxes, FICA or any other taxes or fees;
- (b.) industrial or workers compensation insurance coverage;
- (c.) participation in any group insurance plans available to employees of the State of Texas;
- (d.) participation or contributions by the State of Texas to the State Employees Retirement System;
- (e.) accumulation of vacation leave or sick leave; or,
- (f.) unemployment compensation coverage provided by the State.

10.07. **DRUG FREE WORK PLACE.** Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor, Contractor's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

10.08. **COMPLIANCE WITH OTHER LAWS.** In the execution of this Contract, Contractor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. Contractor shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.

10.09. **NOTICES.** Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TFC or Contractor, as the case may be, at the address set forth below:

For TFC:                      Texas Facilities Commission  
   1711 San Jacinto Blvd., Room 400  
   Austin, TX 78701  
   Attention: Legal Services Division  
   Phone: (512) 463-3446  
   Fax: (512) 236-6171

For Contractor:            HBA Parking System, Inc.  
   807 Brazos Street, Suite 314  
   Austin, TX 78701-2508  
   Attn: Tsegaye Ashenafi  
   Phone: (512) 478-6848  
   Email: tsegaye@hbaparking.com

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

**10.10. NAME AND ORGANIZATIONAL CHANGES.** (a.) Contractor must provide TFC with written notification of all name changes and organizational changes relating to Contractor including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Contractor, Contractor shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and Contractor shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Contract.

TFC may terminate the Contract due to any change to Contractor that materially alters Contractor's ability to perform under the Contract.

**10.11. GOVERNING LAW AND VENUE.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this section shall be construed as a waiver of sovereign immunity by TFC.**

**10.12. SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

**10.13. PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

**10.14. FORCE MAJEURE.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure", including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party

of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Contract immediately upon written notification to Contractor.

10.15. **LABOR ACTIVITY.** If any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against the Contractor at TFC's facility, which results in the curtailment or discontinuation of services performed herein, TFC shall have the right during said period to employ any means legally permissible to have the work performed.

10.16. **DISPUTE RESOLUTION.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the parties to attempt to resolve all disputes arising under this Contract.

10.17. **COUNTERPARTS.** This Contract may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

10.18. **NO WAIVER.** Nothing in this Contract shall be construed as a waiver of sovereign immunity by the State of Texas. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TFC does not waive any privileges, rights, defenses, or immunities available to TFC by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

10.19. **FALSE STATEMENTS; BREACH OF REPRESENTATIONS.** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and TFC may terminate or void this Contract for cause and pursue other remedies available to TFC under this Contract and applicable law.

10.20. **SURVIVAL OF TERMS.** Termination of the Purchase Order for any reason shall not release Vendor from any liability of obligation set forth in the Purchase Order that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

10.21. **ENTIRE CONTRACT & MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated

attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistently with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

**TEXAS FACILITIES COMMISSION**

  
\_\_\_\_\_

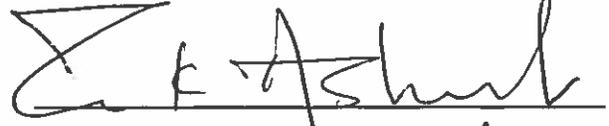
Kay Molina

General Counsel

Date of execution: 1/9/16

 Dir.  
 P.M.

**HBA PARKING SYSTEMS, INC.**

  
\_\_\_\_\_

Printed Name: TSEGAYE ASHENAFI

Title: President

Date of execution: 1/08/16

**EXHIBIT A**  
**TFC CONTRACT NO. 16-071-000**  
**PARKING FACILITIES**

## EXHIBIT A – PARKING FACILITIES

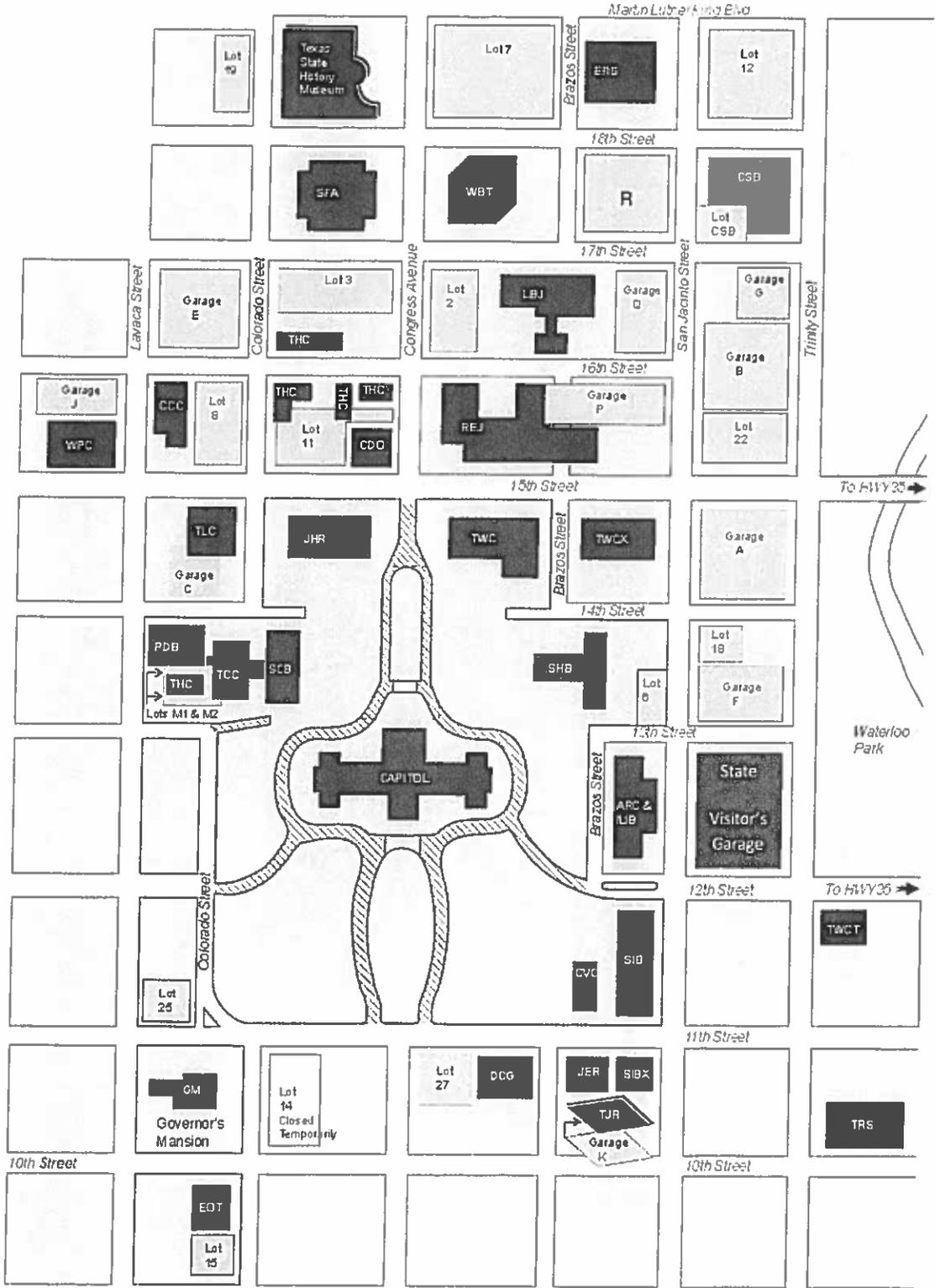
| <i>Bldg. ID</i>                  | <i>Facility Name</i>                   | <i>Address</i>      | <i>City</i> | <i>Spaces</i> |
|----------------------------------|--|---------------------|-------------|---------------|
| <b>Parking Garages</b>           |  |                     |             |               |
| PKA                              | Parking Garage A                       | 1401 San Jacinto    | Austin      | 803           |
| PKB                              | Parking Garage B                       | 1511 San Jacinto    | Austin      | 766           |
| PKE                              | Parking Garage E                       | 1604 Colorado       | Austin      | 1,422         |
| PKF                              | Parking Garage F                       | 1311 San Jacinto    | Austin      | 445           |
| PKG                              | Parking Garage G                       | 315 E. 17th St.     | Austin      | 303           |
| PKH                              | Parking Garage H                       | 4900 North Lamar    | Austin      | 1,130         |
| PKHW                             | Parking Garage H West                  | 4900 Sunshine       | Austin      | 735           |
| PKJ                              | Parking Garage J                       | 300 West 15th St.   | Austin      | 795           |
| PKL                              | Parking Garage L William P Hobby Bldg. | 333 Guadalupe St.   | Austin      | 381           |
| PKN                              | Parking Garage N                       | 300 San Antonio     | Austin      | 679           |
| PKP                              | Parking Garage P                       | 1518 San Jacinto    | Austin      | 620           |
| PKQ                              | Parking Garage Q                       | 1610 San Jacinto    | Austin      | 735           |
| PKR                              | Parking Garage R                       | 1706 San Jacinto    | Austin      | 1,510         |
| <i>Parking Spaces @ Garages:</i> |  |                     |             | <b>10,324</b> |
| <b>Parking Lots</b>              |  |                     |             |               |
| PK02                             | Parking Lot 2                          | 111 E. 17th St.     | Austin      | 122           |
| PK03                             | Parking Lot 3                          | 1601 Colorado       | Austin      | 173           |
| PK06                             | Parking Lot 6                          | 1308 San Jacinto    | Austin      | 18            |
| PK07                             | Parking Lot 7                          | 1807 North Congress | Austin      | 266           |
| PK08                             | Parking Lot 8                          | 1507 Lavaca         | Austin      | 133           |
| PK8A                             | Parking Lot 8A                         | 1507 Lavaca         | Austin      | 10            |
| PK8B                             | Parking Lot 8B                         | 1507 Lavaca         | Austin      | 17            |
| PK11                             | Parking Lot 11                         | 1500 North Congress | Austin      | 147           |

|             |                                     |                     |        |       |
|-------------|-------------------------------------|---------------------|--------|-------|
| <b>PK12</b> | Parking Lot 12                      | 1801 San Jacinto    | Austin | 179   |
| <b>PK14</b> | Parking Lot 14 (Temporarily Closed) | 1000 North Congress | Austin | 134   |
| <b>PK15</b> | Parking Lot 15                      | 902 Colorado        | Austin | 55    |
| <b>PK18</b> | Parking Lot 18                      | 1301 San Jacinto    | Austin | 60    |
| <b>PK19</b> | Parking Lot 19                      | 203 MLK Blvd.       | Austin | 89    |
| <b>PK22</b> | Parking Lot 22                      | 1501 San Jacinto    | Austin | 51    |
| <b>PK24</b> | Parking Lot 24 (on the street)      | 1606 Colorado       | Austin | 17    |
| <b>PK25</b> | Parking Lot 25                      | 1111 Colorado       | Austin | 49    |
| <b>PK26</b> | Parking Lot 26                      | 701 W. 51st Street  | Austin | 1,472 |
| <b>PK27</b> | Parking Lot 27                      | 101 E 11th Street   | Austin | 43    |

*Parking Spaces @ Lots:* **3,035**

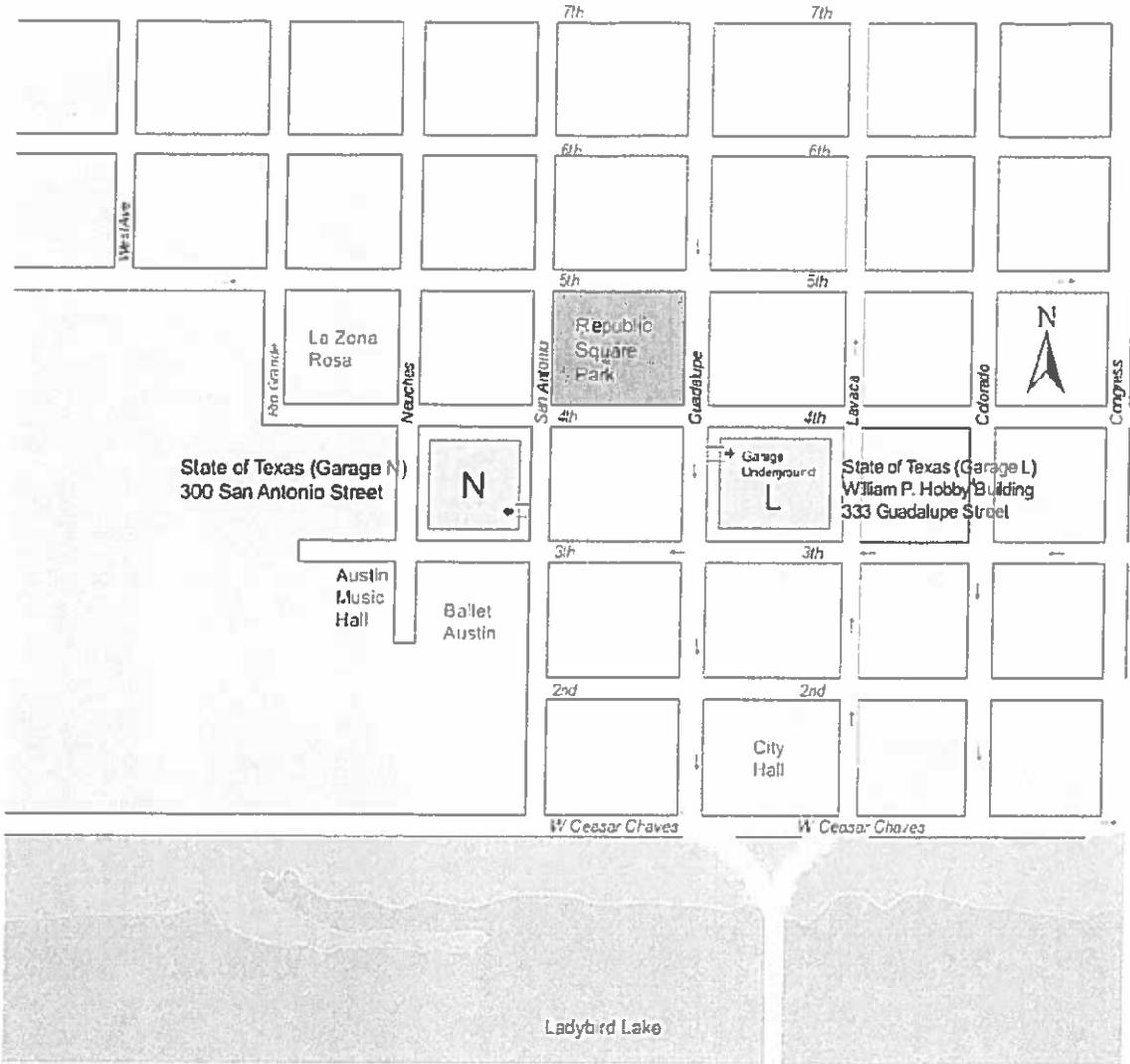
**Total Parking Spaces: 13,359**

# Capitol Complex Parking Facilities



# Downtown Parking Facilities

## Hobby Complex



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**EXHIBIT B**

**TFC CONTRACT NO. 16-071-000**

**TFC COMMERCIAL PARKING AND  
SPECIAL EVENTS ("CPSE") POLICIES**

## **EXHIBIT B- TFC COMMERCIAL PARKING AND SPECIAL EVENTS ("CPSE") POLICIES**

### **Background and Purpose:**

Texas Government Code Section 2165.2035(b) states that "The commission shall develop private, commercial uses for state-owned parking lots and garages located in the city of Austin at locations the commission determines are appropriate for commercial uses outside of regular business hours." The statute further allows for the following:

- TFC may employ private vendors to assist in leasing of parking lots and garages
- Revenue generated from the lease of parking facilities can be used to offset the cost associated with the lease of the facilities
- State employees displaying a valid identification card are allowed to park free of charge
- Nonprofit, charitable, and other community organizations may use the William P. Hobby Parking Garage L, and nearby Parking Garage N, free of charge or at a reduced rate as determined by TFC

Under Texas Government Code Section 2165.204(a) "The commission may lease to a private individual an individual space in a state-owned parking lot or garage located in the city of Austin if the commission determines the parking to be in excess of the number of parking spaces sufficient to accommodate the regular parking requirements of state employees employed near the lot or garage and visitors to nearby state government offices." However the statute requires that these private leases not interfere with the provisions of Section 2165.2035, including any special event parking related to institutions of higher education. Any private individual who leases a space under this statute will be afforded preference in renewing their lease.

Texas Government Code Section 2165.2045(a) states that "The commission may lease to an institution of higher education or a local government all or a significant block of state-owned parking lot or garage located in the city of Austin if the commission determines the parking spaces located in the lot or garage to be in excess of the number of parking spaces sufficient to accommodate regular parking requirements of state employees employed near the lot or garage and visitors to nearby state government offices." As with the lease to private individuals, lease to institutions of higher education and local government must not interfere with the provisions of Section 2165.2035. TFC must also afford preference for renewal for any such leases.

Notwithstanding any revenue used to offset costs associated with the lease of the parking facilities, all remaining balances are deposited to the credit of the general revenue fund.

Overarching all the leasing provisions noted above is the purpose for the legislation as stated under Texas Government Code Section 2165.201, as follows:

- TFC should "encourage the most efficient use of valuable space in...parking garages"
- TFC should strive to "serve the needs of employees and visitors in the buildings"
- TFC efforts in leasing the parking facilities should "enhance the social, cultural, and economic environment in and near the buildings"

TFC should also always strive to lease its parking facilities at fair market value.

### **CPSE Policies on Commercial Parking:**

#### **General:**

The leasing of state-owned parking facilities is driven by TFC's mandate to use its valuable assets in the most efficient manner possible. In this context TFC is striving to monetize its assets to the greatest degree possible for the benefit of the State. "Leasing", in context of the CPSE Commercial Parking program, is generally intended to define the short-term, incidental use of TFC parking facilities; such as public parking for an evening to attend a cultural event, or agreements with an institute of higher education addressing a sporting season. However, the CPSE Commercial Parking program also manages leases to private individuals. Those leases are generally of longer duration and not associated with a given social or cultural event.

In order to effectively perform its duties, the CPSE Commercial Parking program must rely on parking management vendors. These vendors identify opportunities for the monetization of parking facilities and physically manage the leasing efforts at the parking facilities. The reduced or no cost events often require the services of the parking management vendor and the loss of revenue affects the terms of their contract. The CPSE program must also ensure that there are controls in place to properly account for all transactions.

TFC's efforts to monetize its parking facilities must be counterbalanced against the needs to provide parking at no or reduced cost; for nonprofit, charitable or other community organizations and events. The CPSE program therefore not only establishes the maximum fair market value for the leasing of parking facilities but also determines when parking is offered at no cost or at a reduced rate.

**Commercial Parking during Regular Business Hours:**

The CPSE Commercial Parking program is primarily focused on leasing of state-owned parking facilities outside regular business hours. Leasing parking facilities during regular business hours presents many challenges including the potential displacement of state employee parking, increased vehicle and pedestrian traffic, and increased custodial needs. However, certain events such as graduation ceremonies and University Interscholastic League events have been found to present opportunities for TFC to meet its statutory obligations to use its facilities efficiently and enhance the social and cultural environment in the area. Given the potential for conflict with state employee use, day time leasing of parking facilities must always be carefully reviewed and considered on a case by case basis.

**Commercial Parking after Regular Business Hours:**

TFC encourages the use of parking after regular business hours. The CPSE program is responsible for working closely with the parking management vendor to identify all opportunities to maximize the monetization of parking facilities. All State employees displaying a valid identification card are allowed to park their vehicles free of charge. A vehicle sticker issued by DPS is not required.

**Private Parking Leases to Individuals:**

TFC encourages the issuance of parking lease to a private individual for an individual space at parking facilities where there is sufficient capacity to do so. In order to bring the best value to the state, the term of leases to private individuals must be sufficient to cover the effort. The CPSE program is responsible for maintaining a sliding scale fee schedule wherein a shorter time duration lease will cost more per day than a long duration lease. As required by statute, TFC will give preference to private individuals wanting to renew a previously reserved space.

**Leases to Institutions of Higher Education:**

The location of TFC parking lots and garages near the University of Texas (UT) sporting facilities creates the basis for a mutually beneficial relationship. TFC regularly enters into agreements with the university that affords them sole use of certain parking garages during football and basketball games. The agreements generate revenue for the state while providing a valuable service to the university. As required by statute, TFC gives preference to UT in renewing previously reserved space parking facilities.

When UT enters into a lease agreement with TFC for the exclusive use of its parking facilities, State employees displaying a valid identification card will be directed to alternate parking facilities not included in the agreement.

UT has traditionally leased the following facilities:

- Football Season:
  - Parking Garage A: Entire facility, 803 spaces
  - Parking Garage B: Entire facility, 766 spaces
  - Parking Garage G: Entire facility, 303 spaces
  - Parking Garage Q: Entire facility, 735 spaces
  - Parking Garage R: Entire facility, 1,510 spaces
- Basketball Season:
  - Parking Garage B: Entire facility
  - Parking Garage G: Entire facility

**Private Parking Leases for UT Football Tailgating:**

TFC is able to monetize its parking lots and garages during UT home football games while also satisfying the purpose expressed in statute to use the facilities efficiently and enhance the nearby social, cultural, and economic environment. In providing tailgating areas, TFC attempts to provide a variety of options to the public including spaces reserved for the season, short-term reserved space, and first come first served spaces. As required by statute, TFC will give preference to anyone wanting to renew a previously reserved space.

TFC Tailgating Facilities:

- Closed Lots (by reservation):

- Parking Lot 2
- Parking Lot 3
- Parking Lot 7
- Parking Lot 12
- Parking Lot 22 (partial lot reserved)
- Open Lots (first come, first served):
  - Parking Lot 6
  - Parking Lot 8
  - Parking Lot 11
  - Parking Lot 18
- Restricted Open Lot (open lot with restrictions on use):
  - Parking Lot 19; no overnight use; no RV's or trailers; no loud music/television; must vacate lot by 11:00 PM of game day
- Reserved Small Lots (entire lot reserved by one space holder – maximum two events)
  - CSB
    - South parking lot
    - North loading dock
    - East loading dock
  - ERS (partial parking lot)
  - Parking Lot 22 (partial parking lot)
  - WBT (loading dock)
- Open Ground Areas (by reservation):
  - CSBX
  - LBJ
  - Parking Garage E
  - REJ
  - SFA
  - WBT
- Reserved Garage Parking (ground floor only):
  - Parking Garage E
  - Parking Garage J
- Open Garage Parking (first come, first served)
  - Capitol Visitor's Garage
  - Parking Garage E
  - Parking Garage F
  - Parking Garage J
- Restricted Areas (no tailgating permitted)

Policies for Tailgating Facilities:

- General:
  - Safety and Security
    - Primary Space Holders assume responsibility for the safety and security of their guests:
      - Extinguish all fires or flames
      - Unplug electrical devices
      - Secure valuables
    - Prohibited Items:
      - Drugs or drug paraphernalia
      - Fireworks or firework paraphernalia
      - Uncontained open flames, fire pits, bon fires
      - Weapons of any kind
    - Emergency travel lanes must be maintained at all times
    - Golf carts, scooters, ATVs, go carts, and the like are prohibited.
  - Guest Conduct
    - The Primary Space Holder is responsible for their behavior and the behavior of their guests
    - All grilling and portable cooker use must conform to the Office of the State Fire Marshall guidelines:
      - Grilling or cooking inside parking garages is prohibited

- Grilling or cooking devices cannot be attached, connected, or in contact with a vehicle
- Grilling or cooking devices must have lids or covered tops
- Grilling or cooking devices cannot be located near buildings, building air intakes, or doorways.
- Grilling or cooking devices cannot be located on sidewalks or public pathways.
- Grilling or cooking devices must be located a minimum of 25 feet away from any flammable or combustible materials.
- Fully cool grilling and cooking devices prior to storage
- Tents used near or around grilling and cooking devices must be open on all sides, carry a fire resistance rating label and be UL approved.
- All fires must be properly and fully extinguished
  - Pour water on charcoal
  - Dispose of fully cooled charcoal in metal container with metal top
  - Do not dispose charcoal in garbage containers or on grounds
- Restrictions on propane gas devices:
  - Maximum cylinder size is 20 pounds
  - One spare cylinder is permitted and must be located 10 feet from the cooking operation
  - All propane cylinders must be placed in the upright position at all times
  - Always shut off valves prior to disconnecting cylinder from cooking device
  - Always disconnect and remove cylinders prior to storing cooking device
- Primary Space Holders are responsible for ensuring guests use the portable toilets provided.
- Primary Space Holders are responsible for the cleanliness of their tailgating areas.
  - Garbage must be placed in bags during and at the conclusion of tailgating
  - Garbage dumpsters are provided by TFC and must be used
- Securely anchored temporary tents and canopies are permitted.
- Failure of Primary Space Holder to abide by the Football Tailgate Policies may be cause for termination of renewal rights or permanent termination of all rights to access or reserve state facilities for tailgating purposes.
- Accessible Parking
  -
- State Employee Parking
  - State employees displaying a valid identification card may park in Open Lots, the Restricted Open Lot and Open Parking Garages, at no cost.
  - State employees are limited to one parking space only.
- Support Facilities:
  - CPSE staff is responsible for ensuring adequate portable restroom facilities are procured, timely delivered, maintained, and removed.
  - CPSE staff is responsible for ensuring that adequate garbage disposal facilities are procured, timely delivered, maintained, and removed.
  - CPSE staff is responsible for ensuring adequate temporary fencing facilities are procured, timely delivered, maintained, and removed.
  - CPSE staff is responsible for ensuring adequate signage is procured, timely delivered, maintained and removed.
- Miscellaneous
  - Tailgate space may not be used strictly for marketing purposes.
  - No individual, company or entity is permitted to sell items on state property for personal or commercial gain.
  - Tailgate space may not be sublet, sold, or rented to others.
  - Vehicles without valid parking permits will be considered unauthorized and may be towed at owner's or operator's expense.
  - Pets are permitted under the following conditions:
    - All pets must be on a leash
    - Pets shall not be left unattended
    - Pets may not be secured to state property
    - All pet waste must be promptly and properly removed

- Staking tents, tying or affixing any items onto state property is prohibited.
  - All tailgaters are strictly prohibited from using state electrical, plumbing, or telecommunication utilities.
- Closed Lots:
  - Tailgating spaces in Closed Lots are available by reservation
    - Reservations are obtained by registering for reserved Closed Lot spaces on the Tailgate Priority Waitlist
    - The Closed Lot Tailgate Priority Waitlist is updated on a yearly basis
    - Reserved Closed Lot spaces are offered to the first applicant on the waitlist as they become available
      - The applicant must respond within the period of time allotted by CPSE.
      - The applicant must submit payment within the time allotted by CPSE.
    - If an applicant declines a reserved space offer, does not respond or submit payment within the time allotted, they are removed from the waitlist.
    - An applicant who fails to accept an offer, and is removed from the Tailgate Priority Waitlist, and subsequently re-registers to the list will be placed at the bottom of the list.
  - All tailgating areas must be reserved and pre-purchased for the entire season
  - Assigned tailgating spaces may be renewed from season to season
    - The Primary Space Holder must confirm their intent to renew within the period of time allotted by CPSE.
    - The Primary Space Holder must submit payment for the entire season, including any cost increases, within the time allotted by CPSE.
  - Tailgating spaces vary in size
    - A typical tailgate space is the size of a parking space
    - Tailgate spaces with adjoining open space are combined and sold at a higher rate
  - A maximum of ten tailgating spaces is permitted per Primary Space Holder
  - TFC reserves the right to relocate Primary Space Holders to another Closed Lot with the same number of spaces or similar square foot area.
  - In the event that all spaces in a Closed Lot are not reserved, any available space will be sold on game days
    - Available spaces will be sold on a first come, first served, basis.
    - Sale times for available spaces on Closed Lots
      - 6:00 PM through 10:00 PM on the day prior to the game
      - 7:00 AM through one hour after the conclusion of the game on game day
  - Reserved spaces on Closed Lots are available for use beginning on 6:00 PM on the day prior to the game and must be vacated by 12:00 PM the day after the game.
- Open Lots:
  - Tailgating spaces in Open Lots are available on a first come, first served, basis.
  - Tailgating spaces are sold on a per game basis.
    - Only cash, credit and debit card purchases are accepted
    - All sales are final
    - Sale times for Open Lot spaces
      - 6:00 PM through 10:00 PM on the day prior to the game
      - 7:00 AM through one hour after the conclusion of the game on game day
  - There are no renewal options on Open Lot tailgating spaces
  - A tailgate space is the size of a parking space
  - A maximum of ten tailgating spaces is permitted per individual space holder.
  - Reserved spaces on Open Lots are available for use beginning on 6:00 PM on the day prior to the game and must be vacated by 12:00 PM the day after the game.
- Restricted Open Lot:
  - Tailgating spaces in the Restricted Open Lot are available on a first come, first served, basis.
  - Tailgating spaces are sold on a per game basis.
    - Only cash, credit and debit card purchases are accepted
    - All sales are final
    - Sale of times for Restricted Open Lot spaces are 7:00 AM through one hour after the conclusion of the game on game day
  - There are no renewal options on the Restricted Open Lot tailgating spaces
  - A tailgate space is the size of a parking space

- A maximum of ten tailgating spaces is permitted per individual space holder.
  - Recreational Vehicles are prohibited
  - Trailers are prohibited
- Reserved spaces on the Restricted Open Lot are available for use beginning on 7:00 AM and must be vacated by 11:00 PM the day of the game.
- No loud music, television, or sounds are allowed.
- Reserved Small Lots:
  - Tailgating spaces in Reserved Small Lots are available by reservation
    - Reservations are obtained by registering on the CPSE Tailgating website during the application period
    - Reserved Small Lot spaces are reserved on a first come, first served basis
      - Available Reserved Small Lots are determined after Previous Lot Holders are provided the opportunity to renew their previous years' lease.
      - The applicant must respond within the period of time allotted by CPSE.
      - The applicant must submit payment within the time allotted by CPSE.
  - Reserved Small Lot tailgating areas can be reserved for a maximum of two games per season only.
  - Reserved Small Lot tailgating spaces may be renewed from season to season
    - The Previous Lot Holder must confirm their intent to renew within the period of time allotted by CPSE.
    - The Previous Lot Holder must submit payment for the desired game date(s), including any cost increases, within the time allotted by CPSE.
    - Previous Lot Holder renewals are issued on a first come, first served, basis.
      - There are no restrictions on which game date(s) a Previous Lot Holder renews
      - A Previous Lot Holder is limited to the same number of game date(s) reserved during the previous year, or less.
    - A Previous Lot Holder who declines to renew loses their renewal rights.
  - Reserved Small Lots vary in size and location
  - In the event that all Reserved Small Lots are not leased prior to the game, any available lots will be opened for sale on game days
    - Available spaces will be sold on a first come, first served, basis.
    - A maximum of ten tailgating spaces is permitted per individual space holder.
    - Sale times for available spaces on Closed Lots
      - 6:00 PM through 10:00 PM on the day prior to the game
      - 7:00 AM through one hour after the conclusion of the game on game day
  - Reserved Small Lots are available for use beginning on 6:00 PM on the day prior to the game and must be vacated by 12:00 PM the day after the game.
- Reserved Ground Areas:
  - Reserved Ground Area tailgating spaces are available by reservation
    - Reservations are obtained by registering for a Reserved Ground Area space on the Tailgate Priority Waitlist
    - The Reserved Ground Area Tailgate Priority Waitlist is updated on a yearly basis
    - Reserved Ground Area spaces are offered to the first applicant on the waitlist as they become available
      - The applicant must respond within the period of time allotted by CPSE.
      - The applicant must submit payment within the time allotted by CPSE.
    - If an applicant declines a reserved space offer, does not respond or submit payment within the time allotted, they are removed from the waitlist.
    - An applicant who fails to accept an offer, and is removed from the Reserved Ground Area Tailgate Priority Waitlist, and subsequently re-registers to the list will be placed at the bottom of the list.
  - All tailgating areas must be reserved and pre-purchased for the entire season
  - Assigned tailgating spaces may be renewed from season to season
    - The Primary Space Holder must confirm their intent to renew within the period of time allotted by CPSE.
    - The Primary Space Holder must submit payment for the entire season, including any cost increases, within the time allotted by CPSE.
  - Tailgating spaces vary in size and are leased based on their square foot area.

- A maximum of four Reserved Ground Area tailgating spaces are permitted per Primary Space Holder
- In the event that all spaces in Reserved Ground Areas are not reserved, any available space will be sold on game days.
  - Available spaces will be sold on a first come, first served, basis.
  - Sale times for available spaces on Open Ground Areas:
    - 6:00 PM through 10:00 PM on the day prior to the game
    - 7:00 AM through one hour after the conclusion of the game on game day
- Reserved Ground Areas spaces are available for use beginning on 6:00 PM on the day prior to the game and must be vacated by 12:00 PM the day after the game.
- Reserved Garage Parking:
  - Parking spaces in Reserved Garage Parking are available by reservation only
    - Reservations are obtained by registering on the CPSE Tailgating website during the application period
    - Reserved Garage Parking spaces are offered on a first come, first served basis
      - Available Reserved Garage Parking spaces are determined after Previous Reserved Parking Holders are provided the opportunity to renew their previous years' lease.
      - The applicant must respond within the period of time allotted by CPSE.
      - The applicant must submit payment within the time allotted by CPSE.
  - Reserved Garage Parking must be leased and pre-purchased for the entire season.
  - Reserved Garage Parking spaces may be renewed from season to season
    - The previous Reserved Garage Parking Holder must confirm their intent to renew within the period of time allotted by CPSE.
    - The previous Reserved Parking Holder must submit payment for the entire season, including any cost increases, within the time allotted by CPSE.
    - Previous Reserved Garage Parking Holder renewals are issued on a first come, first served, basis.
    - A Previous Lot Holder who declines to renew loses their renewal rights.
  - A minimum of 10 and a maximum of 20 parking spaces can be reserved in Reserved Garage Parking.
  - Reserved Garage Parking is limited to the ground floor of the parking garages.
  - Reserved spaces in Reserved Garage Parking are available for use beginning on 6:00 PM on the day prior to the game and must be vacated by 12:00 PM the day after the game.
    - Reserved spaces will be identified with the Reserved Parking Holder's name.
    - Reserved Parking Holder and their guests are allowed to enter and exit the garage during the term of use.
- Open Parking Garages:
  - Parking spaces in Open Parking Garages are available on a first come, first served, basis.
  - Parking spaces are sold on a per game basis.
    - Only cash, credit and debit card purchases are accepted
    - All sales are final
    - Sale times for Open Parking Garages spaces
      - 6:00 PM through 10:00 PM on the day prior to the game
      - 7:00 AM through one hour after the conclusion of the game on game day
  - There are no renewal options on Open Parking Garage spaces
- Restricted Areas:
  - No tailgating permitted
  - Areas are marked with "No Tailgating" signage
  - Violators will be considered trespassers on state property and may be subject to arrest.

#### **Reduced Rate or No Cost Parking:**

To encourage the efficient use of, and enhance the social, cultural, and economic environment in and near its parking facilities; TFC will entertain reasonable requests for reduced rate or no cost parking made by non-profit, charitable and other community organizations. Although statute limits the provision to consider these types of requests to the William P. Hobby Complex; TFC will consider such requests for all of its parking facilities. TFC endeavors to consider each such request fairly and consistently through a prescribed and defined procedure.

## **CPSE Procedures for Commercial Parking:**

### **Parking Inventory:**

The CPSE program is responsible for maintaining a current account of all available parking in the Austin area. Duties in this regard include, but are not limited to:

1. On a yearly basis inventory all available spaces in TFC owned parking garages and lots, including:
  - a. Visually inspect each garage to confirm reserved and accessible space designations.
  - b. Confer with DPS on availability of spaces and pending request for reservations.
  - c. Confer with TFC's FDC division on the issuance of spaces for construction purposes or pending projects affecting parking facilities.
  - d. Review internal records for private individuals leases and confirm their status
2. On a yearly basis review the status of IAC's between TFC and ERS, SPB, and TRS; including:
  - a. Expiration dates
  - b. Each agency's willingness to extend the IAC
  - c. Any changes to the quantity of parking spaces available for commercial parking leases
  - d. Any other changes to the IAC terms and conditions
3. On a yearly basis provide Parking Management Contractor (PMC) with an updated parking inventory.

### **Fair Market Value Determination:**

The CPSE program is required by statute to lease parking facilities at fair market values. Since the value of parking varies based on location, demand, and time, fair market value must be regularly evaluated and confirmed. The process by which fair market value is achieved includes:

1. Yearly evaluation of parking rates charged by commercial and governmental entities in the Austin area.
  - a. Rate information collected must be broken down by the parking facility service area.
  - b. Rate information must be broken down by time, including:
    - i. Seasonal adjustments
    - ii. Special events
2. Yearly evaluation of football tailgating rates charged by institutions of higher education.
  - a. Rate information should be collected in Texas and adjoining states.
  - b. Rate information should be collected from institutions of higher education of similar size and prominence as UT.
3. The CPSE program evaluates the information collected and consults with PMC.
4. The CPSE makes a formal recommendation to executive management staff. Proposed rates should be broken down by:
  - a. Parking facility location
  - b. Time of year
  - c. Events generating parking demands
  - d. Institutions of higher education
5. Executive Management makes a final determination and approval of fair market value.

### **Parking Management:**

In order to maximize the efficient use of state-owned parking facilities the CPSE program must continually manage their usage. The management of parking facilities is handled by CPSE staff and through PMCs hired by the program. Duties associated with the management of parking facilities include, but are not limited to:

1. In-house Management:
  - a. Complaint Management:
  - b. Restrict parking during regular business hours:
  - c. Inspect parking facilities:
  - d. Procure good and services:
2. Outsourced Management:
  - a. Solicit PMP services:
  - b. Oversee and Manage PMC contract:
  - c. Communicate changes in facility availability:
    - i. Facilities leased at reduced or no cost
    - ii. Facilities out of service due to construction projects
    - iii. Facilities out of service due to Executive Director action

### **Private Parking Leases:**

The CPSE program is responsible for managing private parking leases at TFC owned or managed parking facilities. Duties associated with these private leases include, but are not limited to:

1. Evaluate Requests for Private Parking Leases:
2. Issue Private Parking Leases:
3. Monitor Private Parking Leases:
4. Renew Private Parking Leases:

#### **UT Parking Lease Agreement:**

The CPSE program is responsible for managing the Parking Lease Agreement (PLA) with UT. These responsibilities include, but are not limited to:

1. Six months prior to the expiration of the current PLA, advise executive staff of adjustment or changes that could improve the PLA.
2. Work with the Contract Administration Manager (CAM) to implement changes to the PLA approved by executive staff.
3. Ensure the timely invoicing of lease costs and confirm timely receipt of funds.
4. Monitor the use of the parking facilities by UT to ensure all lease provisions are met.

#### **Football Tailgating Management:**

The CPSE program is responsible for the management of all leasing to the public associated with UT football tailgating. Responsibilities include but are not limited to:

1. During January of each year advise executive staff of adjustments or changes that could improve the tailgating program.
2. Work with the CAM to revise and update forms and Football Tailgate Policies to document changes approved by executive staff.
3. Work with the TFC Information Services (IS) division to update the TFC website with changes approved by executive staff.
4. Confirm renewing tailgate space leaseholders
  - a. Issue email to all current leaseholders including 15 calendar day deadline for reply.
  - b. Confirm receipt of advance payment
5. Update Tailgate Priority Waitlist
- 6.

#### **Free or Reduced Rate Parking:**

The CPSE program is responsible for evaluating reasonable requests for reduced rate or no cost parking made by non-profit, charitable and other community organizations. To evaluate requests the program will consider the following:

1. Request for Use Application:
  - a. All requests must be submitted using the Application for Use of State Parking Facilities Form.
  - b. Application must be fully completed and received 30 days prior to the requested use date.
  - c. Application must include a copy of applicant's current Internal Revenue Service 501(c) Form, if applicable.
  - d. Application must include applicant's Certificate of Insurance naming TFC as additionally insured and meeting the coverage required by TFC, if applicable.
  - e. Application must include any other information TFC determines is necessary to evaluate a request.
2. CPSE evaluation of request:
  - a. General:
    - i. Requests that interfere with the operation of State of Texas business are not permitted.
    - ii. Requests that interfere with a previously scheduled use of the facility are not permitted.
    - iii. Requests that could result in damage to state-owned facilities, negative health and safety concerns to state employees or the public, or disruption of the peace, are not permitted.
  - b. No Cost Use is Approved for:
    - i. Civic events such as commemorative marches, protests, and expression of free speech.
    - ii. Requests that occur after regular business hours and are not in conflict with events in which TFC can generate revenue from the facility.
    - iii. Requests approved as no cost by the Executive Director of TFC.

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**EXHIBIT B-1**

**TFC CONTRACT NO. 16-071-000**

**TFC PARKING CONTRACTOR PAYMENT PROCESSING  
PROCEDURES**

**EXHIBIT B-1**  
**TFC PARKING CONTRACTOR PAYMENT PROCESSING**  
**PROCEDURES**

The contractor opens to sell at the fee set by the TFC – current normal rate of \$7.00 per space (no in & out), but may charge more or less as directed & approved by TFC.

**Capitol Complex:**

Normal After Hour Special Events - Collect Cash at point of entry and will accept checks if no other option available to patron. Open the State garages/lots Monday thru Friday after 6:00 PM and the weekend when there is a Charge event in the area or during various graduations at Frank Erwin Center or other venues.

Special Event (Pre-Paid in Advance) – either at a reduced or normal rate – TFC processes the 'Request for Use' form and approves the rate. The patron requestor contacts parking contractor directly in advance to submit payment by Cash, Check or Credit Card. TFC provides a parking pass to utilize the pre-paid spaces.

Day-time special events – opens at the approval of the DPS with direction & approval of TFC at the rate set by TFC - Collects Cash at point of entry and will accept checks if no other option available to patron. \*(Note: DPS & TFC generally do not approve day-time use during Legislative Session, every other year.)

Non-Profit organizations - TFC process the 'Request for Use' form and approve free use of State facilities. The special event organizer MAY solicit the services of the TFC parking contractor for a fee to "secure or hold" various State parking facilities for event setup. \*(Note: Example MS150 Bike Ride).

Memorandum of Understandings - State Preservation Board (SPB) & Teachers Retirement System (TRS) – currently has a MOU to utilize the TFC parking contractor to allow the TFC parking contractor to operate their parking facilities upon request or on a weekly basis on Thursday, Friday and Saturday. Collect Cash at point of entry and will accept checks if no other option available to patron.

State Employee FREE special event parking - Legislatively mandated through SB1533, the TFC parking contractor is to accept the State of Texas Valid Employee Photo ID to allow the employee to utilize (1) parking space at no charge. Some special events the State employee MAY only be authorized free parking in "designated" State garages/lots. \*(Note: for example when TFC sells a State Garage or Lot in its entirety or the majority of spaces and access to other garages/lots are made available to State employees on a first come first serve basis. Such as UT Home Football games and UT Men's Basketball or other Special Events as requested use.) TFC parking contractor is provide a separate parking permit for the use of free parking spaces & are required to track the number of State employees utilizing the option of a free parking space. No fee to be collected. \*(Note: Retired State Employees no longer receive this privilege.)

UT Football Tailgate (Reserved/Pre-Paid in advance for ALL season) – Open Areas & Grass Areas – The TFC processes the request for the Primary Space Holder to (Renew or Refuse) the Same spaces as the previous year with the option to hold this right to renew or refusal each season to reserve & pre-pay in advance for all homes games for use from 6:00 PM Friday to Noon on Sunday for a fee that is set by the TFC for tailgate purposes. Current rate is \$40.00 per space on parking lots and the fee varies on the Grass open areas by square footage for the fee of \$14.00 to \$133.00 per game. TFC books the renewed spaces and the TFC parking contractor

currently collects the fees by accepting payment by Cash, Check or Credit Card (with a \$5.00 transaction fee applied).

Following are approximate time frames for various of the procedures and tasks that the Contractor is responsible for completing each year:

MAY – the 'Request to Renew or Refuse' email is sent to ALL Primary Space Holders with a deadline to reply if they wish to renew or refuse and assign two (2) alternates that may also pick up their permits in their absence and TFC provides the current rate to be charged per space/per game all season.

MAY / JUNE – TFC sets the deadline date (early July) for the payment to be paid 'direct' to the TFC parking contractor. The TFC (CPSE) staff begins to 'book' the renewal of the spaces on the TFC booking system and the email confirmation with the spaces assigned & the Primary Space Holder as well as the TFC parking contractor receives the email to show the spaces booked and amount due for all season. The TFC parking contractor collects the fee by Cash, Check or Credit Card (with a \$5.00 transaction fee applied).

JULY – TFC and the TFC parking contractor finalize all Reserved space bookings, all advanced payments and verifies the funds received against the TFC booking system and collection tracking spreadsheet and verifies if there are any spaces available on the reserved lot(s) to offer to the TFC Priority Wait List. Revise all contact information provided to TFC and Revise the Reserved lot Maps with the Primary Space Holders name.

JULY - TFC and the TFC parking contractor finalizes all Priority Wait List bookings, advanced payment and verifies the funds received against the TFC booking system and collection tracking spreadsheet and adds the assigned two (2) alternates that may also pick up their permits in their absence.

MAY – AUG – TFC parking contractor is working to prepare for the UT Football season by processing the booking permits, hiring & training event parking staff, hiring a cleaning contractor to clean the State garages/lots the parking contractor currently receives revenue from, scheduling a dumpster for use on lot 22 for each home game, purchasing parking contractor permits 'in bulk' to prepare & be issued for each space/per game for all games of the season, purchase signs, cones & equipment required to manage the parking operation and prepare the State garage "G" parking office to operate the TFC parking program.

MAY – AUG – TFC (CPSE) staff are working to book & process the tailgate spaces, payments, contact information to revise spreadsheets and revisions of maps (using Publisher software), create Micro Main work orders for supplies & UT billing of garages & cleanup cost & UT revise, order and hang signs (A-Frame & corrugated), solicit a bid for "Portable Toilets" & 'Fence' to be erected at State lot 7 (@ Congress between MLK & 18th street each game.), solicit a bid for a "cleaning contractor" to clean the (5) leased UT parking garages and charge back the cost to UT. Measure and/or replace Grass Markers in all grass areas.

#### **Downtown Complex:**

Normal After Hour Special Events - Collect Cash at point of entry and will accept checks if no other option available to patron. Open one or both State garages L & N every Wednesday thru Saturday and Sunday, Monday, Tuesday depending on area charge events at 5:00 PM Monday thru Friday and garage N at 7:00 AM on Saturday for the TFC approved Tiered parking rate to accommodate the Farmer's Market and normal Downtown nightlife business and for Special events.

Special Event (Pre-Paid in Advance) – either at a reduced or normal rate – TFC processes the 'Request for Use' form and approves the rate. The patron requestor contacts parking contractor directly in advance-payment by Cash, Check or Credit Card. TFC provides a parking pass to use the pre-paid spaces.

Non-Profit organizations (free, reduced or normal rate) - TFC process the 'Request for Use' form and approve and designate fee or free use of State facilities. TFC provides a parking pass to utilize the spaces as approved. If a fee is to be paid, the patron requestor contacts parking contractor directly in advance to submit payment by Cash, Check or Credit Card.

State Employee FREE special event parking - Legislatively mandated through SB1533, the TFC parking contractor is to accept the State of Texas Valid Employee Photo ID to allow the employee to utilize (1) parking space at no charge. Some special events, the State employee MAY only be authorized free parking in "designated" State garages/lots. \*(Note: for example when TFC sells a State Garage or Lot in its entirety or the majority of spaces reserved and access to other garages/lots are made available to State employees on a first come first served basis. Such as UT Home Football games and UT Men's Basketball or other Special Events as requested use.) TFC parking contractor is provide a separate parking permit for the use of free parking spaces & are required to track the number of State employees utilizing the option of a free parking space. No fee to be collected. \*(Note: Retired State Employees no longer receive this privilege.)

**EXHIBIT C**

**TFC CONTRACT NO. 16-071-000**

**LIMITATIONS ON AMOUNTS CHARGEABLE FOR PARKING**

**EXHIBIT C**  
**LIMITATIONS ON AMOUNTS CHARGEABLE FOR PARKING**

Maximum amount chargeable by Contractor per space for parking at any Facility shall not exceed the following for each type of event listed:

|  |      |
|--|------|
| University of Texas ("UT") football games (excluding tailgating) | \$20 |
| Tailgating space(s) in conjunction with UT football games        | \$40 |
| UT basketball games  | \$15 |
| UT sporting events other than football and basketball            | \$12 |
| Concerts and other events not otherwise listed                   | \$12 |
| School or UIL-sponsored events (e.g. graduation ceremonies)      | \$10 |

In order to help to ensure that rates charged are reasonable relative to local market prices and the type of event involved, TFC shall have the right to perform a market assessment of Contractor's pricing at least once per each twelve month period during the term of this Contract. TFC, in its sole discretion, shall have the right to direct Contractor to adjust the maximum rate chargeable for Facility parking if so indicated by the results of that assessment. Subject to and without limitation on TFC's rights as set forth in the foregoing sentence, TFC and Contractor may at any time during the term hereof, mutually agree to adjust the maximum rates listed on this Exhibit F.

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**EXHIBIT D**

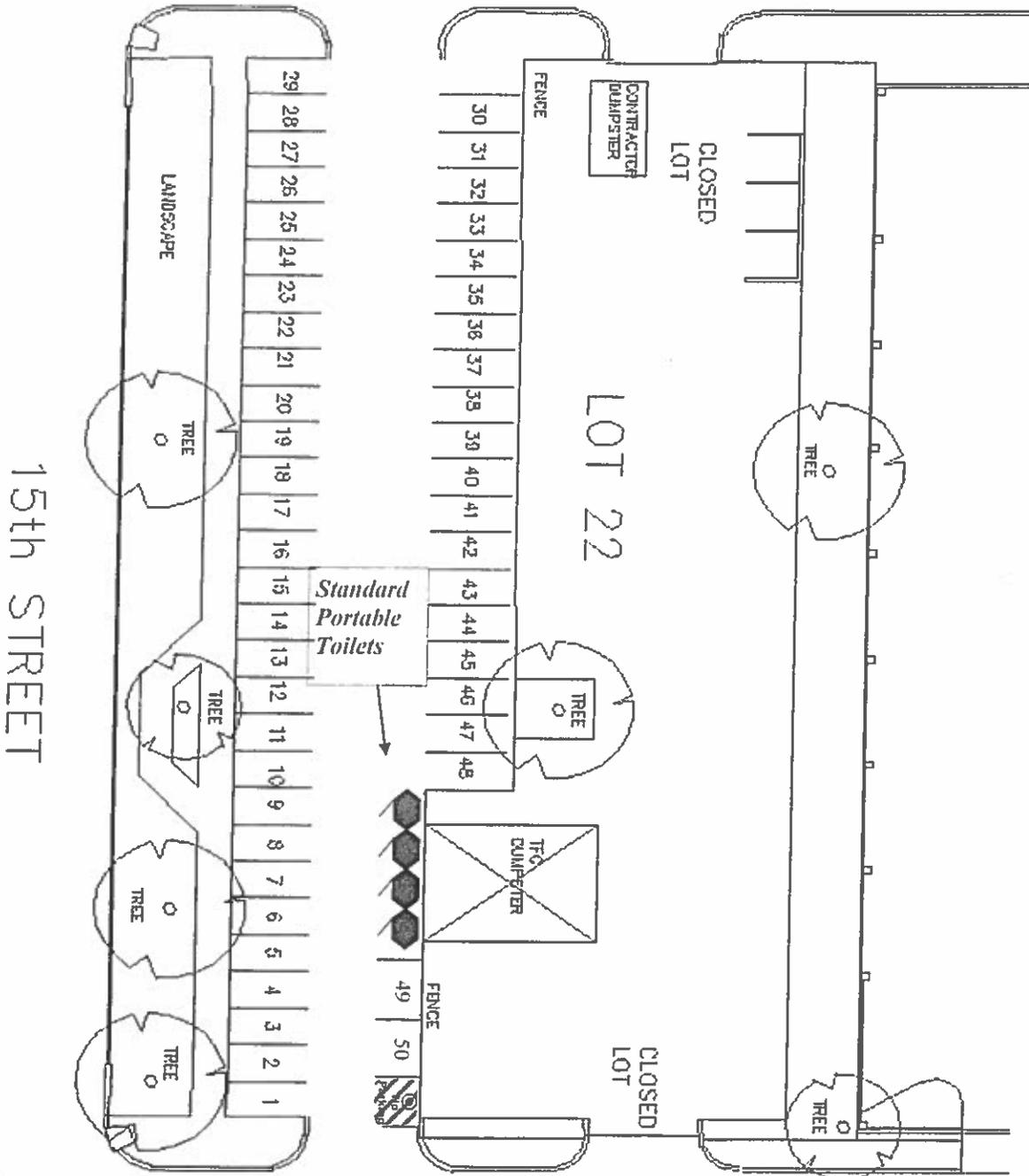
**TFC CONTRACT NO. 16-071-000**

**GARBAGE DUMPSTER LOCATION MAP**



# Lot 22

SAN JACINTO BLVD.



15th STREET

TRINITY STREET



**EXHIBIT E**

**TFC CONTRACT NO. 16-071-000**

**CONSIDERATION TO BE PAID BY CONTRACTOR TO TFC**

**EXHIBIT E**  
**CONSIDERATION TO BE PAID BY CONTRACTOR TO TFC**

**OPTION 1 – REVENUE-SHARING MODEL**

During the term of this Contract, on a monthly basis no later than the fifth business day of each month, Contractor shall pay to TFC on a weekly basis a percentage of the gross parking revenue collected by Contractor for the immediately preceding week. The percentage to be paid to TFC shall be calculated based on 100% of the week's gross revenue, but reduced by the amount of sales and/or other taxes due. Payment shall be submitted to TFC in the form of a check or money order made payable to the Texas Facilities Commission and sent to the Texas Facilities Commission, Attn: Chief Financial Officer, PO Box 13047, Austin, TX 78711.

The percentage of gross parking revenue to be paid by Contractor to TFC hereunder on a weekly basis is:

TFC percentage = 61 %

Contractor percentage = 39 %

Contractor's obligation to make payments to TFC as provided in this Exhibit D shall have no effect whatsoever on Contractor's obligations to collect and remit to the appropriate authority(ies), all sales and/or other applicable taxes that may become due and owing based on revenue collected by Contractor pursuant to its performance under this Contract.

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**EXHIBIT F**

**TFC CONTRACT NO. 16-071-000**

**CRIMINAL BACKGROUND CHECK  
AND APPLICATION GUIDELINES**



## **Texas Facilities Commission**

### **Criminal Background Checks and Application Guidelines**

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## **Introduction**

Texas Facilities Commission (TFC) has implemented new security procedures. Personnel and TFC contractors & subcontractors, who work in case-sensitive areas, may be required to submit to a criminal history background check. In addition, U.S. Law requires companies to employ only individuals who may legally work in the United States; therefore employers must verify and show proof that employees are authorized to work. This package will begin the process for employers to authorize its employees to work for TFC.

## **Criminal History Criteria**

Employers should use the following criminal history criteria when hiring employees to perform work for TFC. Any employee failing to meet the minimum standard will be denied. If special circumstances exist, please contact the TFC representative for clarification.

### **Contractor Screening Criteria**

A conviction or deferred adjudication for one of the following offenses will result in the **permanent disqualification** of a person from eligibility to provide contractual services with Texas Facilities Commission:

- 1) any act causing death as defined in Texas Penal Code;
- 2) any felony or misdemeanor involving Arson, Burglary, Breach of Computer Security, Credit Card Abuse, Counterfeiting, Forgery, Kidnapping, Robbery, Stalking, Terroristic Threat, Theft, and any sexual offense designated as a felony in Texas Penal Code;

Additionally, anyone who has a current duty to register as a sex offender, is under indictment or is a fugitive from justice is disqualified.

For individuals who have a conviction or deferred adjudication for felonies not enumerated above, 10 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the Texas Facilities Commission

For individuals who have a misdemeanor conviction or deferred adjudication for misdemeanors not enumerated above, 5 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the Texas Facilities Commission

## Employer Guidelines

### FINGERPRINT APPLICANT SERVICES OF TEXAS, F.A.S.T.

The Department of Public Safety has entered into an exclusive contract with L-1 Enrollment Services to provide statewide electronic fingerprinting. The goal of the Fingerprint Applicant Services of Texas (F.A.S.T.) Program is to provide convenient applicant fingerprinting services throughout the state of Texas. L-1 Enrollment Services is committed to a 98% classifiable rate which means quality prints, less rejections, and quick responses. Appointments are available by scheduling on-line at [www.L1enrollment.com](http://www.L1enrollment.com) or by calling 1-888-467-2080. The cost of this service is \$9.95 plus a \$34.25 fee for the State and National Criminal History Record Information. You may pay for F.A.S.T. services online with a credit card or onsite with a check or money order made payable to L-1 Enrollment Services only. Cash is not accepted!

Here is how to get started:

1. You must obtain a FAST Pass from Texas Facilities Commission (located in forms C-1). This pass will contain all necessary instructions and information to schedule your fingerprint appointment.
2. You will need to schedule an appointment by logging on to the L-1 Enrollment Services website, [www.L1enrollment.com](http://www.L1enrollment.com) or by calling 1-888-467-2080. If you are scheduling by phone, please request an "Electronic Fingerprint Submission" appointment.

When scheduling an appointment you will be prompted by L-1 Enrollment Services for the following additional personal data: Date of Birth, Sex, Race, Ethnicity, Skin Tone, Height, Weight, Eye Color, Hair Color, Place of Birth and Home Address. Requested data is required by the Texas Department of Public Safety to process your background check.

3. Please complete the necessary fields on the FAST Pass, bring your completed pass and valid State Issued Identification. During your Fingerprint appointment you will be prompted for Social Security Number and Driver License Number. You are also required to have your photograph taken at the time of your appointment. Requested data is required by the Texas Department of Public Safety to process your background check.

4. Once you have completed your appointment you will be provided with a signed receipt which includes your Tracking Control Number (TCN), please retain this receipt for your records.

Your fingerprints, demographic information, and photograph will be sent to the Department of Public Safety and the Federal Bureau of Investigation for process. Criminal History Record Information based upon your submission will be provided to the requesting agency.

If you have any questions regarding the F.A.S.T. processes, please feel free to contact the Fingerprint Services Unit at [fingerprint.service@dps.texas.gov](mailto:fingerprint.service@dps.texas.gov) or (512) 424 – 2365, Option 6.

A TFC representative will view criminal history information from DPS to determine if employee's clearance is accepted or denied. TFC will notify employer about the status of employee. The employee can submit a request to DPS to view their criminal history.

Employers must ensure that all employees are legally able to work in the United States. Employees must be a U.S. citizen or a foreign citizen who have the necessary authorization. Employers shall use E-Verify to check the status of employees. E-Verify is fast, free and easy to use. Employer will set up an account and go through the process. Employer must provide TFC with documentation the employee is authorized to work.

# The Verification Process

## Overview of the Verification Process



Using E-Verify to verify the employment eligibility of employees is a three-step process.

### Create a Case

Before an employer can create a case in E-Verify, both the employer and employee must complete the Employment Eligibility Verification form (Form I-9). All U.S. employers, regardless of whether they participate in E-Verify must complete Form I-9 no later than 3 business days after the employee begins work for pay. Information about the employee from Form I-9 then serves as the foundation for an E-Verify case, which must be created also no later than 3 business days after the employee begins work for pay.

E-Verify guides the employer through a series of questions, which follow Form I-9, beginning with the employee's citizenship attestation, document type(s), then biographical information including name, date of birth, Social Security number and Alien or I-94 number (if a noncitizen). In some cases, the document number and expiration date are also required.

If E-Verify cannot initially match the information, the employer will be prompted to review and correct the information if necessary. Otherwise, E-Verify will display an initial response within three to five seconds.

## Get Results

In most cases, E-Verify will instantly verify the employee's work authorization. If E-Verify returns an "Employment Authorized" response, the employer can continue to the last step in the verification process and close the case.

Sometimes, E-Verify cannot immediately confirm the employee's work authorization and may require the employer or the employee to take action. In these cases, the employer will see one of the following responses on the employee's verification results screen:

- **DHS Verification in Process:** Sometimes, E-Verify's automated search of government records cannot immediately verify employment authorization, and a manual search is required. In this case, E-Verify will return a "DHS Verification in Process" response. The employer must check E-Verify until the employee's case is updated, which usually happens within 24 hours, though it may take as long as three business days. When the employee's case is updated, E-Verify will return either an "Employment Authorized" or "Tentative Nonconfirmation" response.
- **Tentative Nonconfirmation:** If the employee information does not match government records, the employer will see a tentative nonconfirmation (TNC) response. Visit the "Tentative Nonconfirmation" page in this section for more information.

To prevent unnecessary TNCs, the employer must carefully review all entered information for accuracy. Should the employer have made a typographical error or entered incorrect data, the employer should close the case and create a new case for the employee with the correct information.

- **Note: Employer will need to print verification and submit to TFC Representative.**

## Close the Case

All E-Verify cases must be closed by the user in E-Verify when a final verification result is received, regardless of the result. Closing cases is very important because it helps E-Verify maintain statistics on program usage and outcomes.

E-Verify will ask if the employee is still working for the employer and will then instruct the employer to choose the reason why the case is being closed. Once the case is closed, the employer must either record the case verification number on the employee's Form I-9 or print the case details and keep it on file with the employee's Form I-9.

## **PROCEDURES FOR FINGERPRINT REJECTIONS ELECTRONIC FINGERPRINT SUBMISSIONS**

The Department of Public Safety will notify L-1 Enrollment Services when an applicant's fingerprints are rejected by either DPS or the FBI, regardless of the purpose and/or agency the fingerprints were submitted for. L-1 Enrollment Services will contact the applicant by telephone and by letter to notify the applicant of the rejected prints and schedule an appointment to have the fingerprints re-taken. There is no additional cost for having their fingerprints rolled again; often the applicant will disregard contact attempts from L-1 Enrollment Services because they are not DPS or the requesting agency.

### **DPS REJECTS**

When an applicant's fingerprints are rejected for the first time on the DPS level their fingerprints are not submitted to the FBI. The requesting agency is notified of the rejection through Consolidated Response. Upon the second submission of fingerprints, whether the prints are rejected or deemed classifiable by DPS, they are sent to the FBI for process. The applicant has one year from the date of the last rejected fingerprint submission to complete the fingerprint based criminal history process. After one year, a new set of fingerprints and all fees must be resubmitted.

### **FBI REJECTS**

The requesting agency is notified of the FBI rejection through Consolidated Response. Upon the second FBI rejection, it is the responsibility of the agency to request criminal history information based upon the applicant's name and date of birth from the FBI directly. The requesting agency has 90 days from the date of the last rejected fingerprint submission to request the results from the FBI. After the 90th day, a new set of fingerprints and all fees must be resubmitted.

### **QUESTIONS**

If you have any questions regarding the electronic fingerprint rejection process please contact the Fingerprint Services Unit at [fingerprint.service@dps.texas.gov](mailto:fingerprint.service@dps.texas.gov) or (512) 424-2365, option 6.

## CRIMINAL HISTORY ERROR RESOLUTION

The Error Resolution Unit (ER) is responsible for updating and evaluating possible errors in criminal history records. Potential errors are reported to ER by law enforcement, judicial agencies, as well as private citizens.

### Requests Made by Applicants:

If an applicant needs to request that a criminal history record be updated or corrected, the applicant will need to supply certified documents to the Error Resolution Unit. Required forms and additional information to assist your applicant in retrieving the proper documentation to submit their requests to the Error Resolution Unit can be found at:

[http://www.txdps.state.tx.us/administration/crime\\_records/pages/errorresolution.htm](http://www.txdps.state.tx.us/administration/crime_records/pages/errorresolution.htm) and through the links below.

Help us Help You (PDF)

Error Resolution Form (PDF)

CHRI Tips (PDF)

## Contact Information

L-1 Identity Solutions  
Finance Department  
15 Century Blvd., Suite 510  
Nashville, TN 37214  
Phone: (877) 512-6962  
Fax: (615) 871-0845

Department of Public Safety  
Access and Dissemination Bureau  
Crime Records Service  
Phone: 512-424-2000

Marlena Schoenfeld  
Risk Management Specialist

Texas Facilities Commission  
1711 San Jacinto  
Austin, Texas 78701  
Office: 512-463-7148  
Cell: 512-828-1996  
Fax: 512-236-6170  
Email: [marlena.schoenfeld@tfc.state.tx.us](mailto:marlena.schoenfeld@tfc.state.tx.us)

Mark Gil  
Director of Risk Management

Texas Facilities Commission  
1711 San Jacinto  
Austin, Texas 78701  
Office: 512-463-1668  
Cell: 512-563-4093  
Fax: 512-236-6170  
Email: [mark.gil@tfc.state.tx.us](mailto:mark.gil@tfc.state.tx.us)



*Account Application*

Firm Name: \_\_\_\_\_

Agency ID/ORI: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Average Monthly Volume Estimate (# of applicants): \_\_\_\_\_

Deposit Amount: \_\_\_\_\_

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date

Please remit draw account payments to:

**L-1 Enrollment Services Division  
Finance Department  
15 Century Blvd., Suite 510  
Nashville, TN 37214**

**Phone: (877) 512-6962  
Fax: (615) 871-0845**

# TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N. LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001  
512/424-2000

[www.txdps.state.tx.us](http://www.txdps.state.tx.us)

## Fingerprint Applicant Services of Texas (FAST)

The Department of Public Safety (DPS) entered into a contract with L1 Enrollment Services in 2005 to offer electronic fingerprinting services to our criminal and non-criminal justice customers. Since 2005, over 1.8 million customers have taken advantage of the FAST Program to satisfy criminal and non-criminal justice criminal history background check requirements. Currently, DPS and L1 Enrollment Services have 81 FAST locations strategically located around the state for customers to use. In addition to the statewide service, the DPS Denson Lobby at 108 Denson Drive provides walk-up fingerprinting services on a first come first serve basis.

### FAST Process:

1. *Obtain a FAST Fingerprint Pass.* This document is available from your contact at the Texas Facilities Commission.
2. *Schedule a FAST Fingerprinting Appointment.* Please utilize the statewide FAST service by scheduling an appointment at [www.L1enrollment.com](http://www.L1enrollment.com) or by calling 1-888-467-2080. If you are located in the Austin area you may visit the DPS Denson Lobby at 108 Denson Drive. The Denson Lobby location provides FAST services on a first come first serve basis. It is very important that you follow the instructions on your FAST Fingerprint Pass.
3. *Attend Your Scheduled Fingerprint Appointment.* Attend the fingerprinting appointment selected during the scheduling process. At the fingerprinting location you *must* present a valid driver's license or state identification card to establish your identity. After your identity has been established, you will be electronically fingerprinted, digitally photographed, and additional biographical information will be requested.
4. *Keep Your Receipt.* At the end of the fingerprinting appointment the technician will provide you a receipt. If your fingerprints reject (<2% of the time) due to fingerprint abnormalities, you will need the TCN that is on the receipt to get fingerprinted again at no charge.

If you have any questions or need assistance please contact the Fingerprint Services Unit at [fingerprint.service@txdps.state.tx.us](mailto:fingerprint.service@txdps.state.tx.us) or at (512) 424 – 2365, option 6.



# IN STATE APPLICANT

## Texas Facilities Commission

This document is your FAST Fingerprint Pass for a state and national criminal history record check. Please schedule a fingerprint appointment by visiting <http://www.identogo.com> or by calling 1-888-467-2080. When scheduling an appointment you will be prompted by Identogo for the following additional personal data: Date of Birth, Sex, Race, Ethnicity, Skin Tone, Height, Weight, Eye Color, Hair Color, Place of Birth and Home Address. During your Fingerprint appointment you will also be prompted for Social Security Number and Driver License Number. Requested data is required by the Texas Department of Public Safety to process your background check. These data elements have been omitted from this document in order to better protect the security of your personal information.

You may pay for FAST services online with a credit card or onsite with a check or money order only. Your fingerprints will be submitted to the Texas Department of Public Safety and the Federal Bureau of Investigation.

- |   |  |
|---|--|
| 1. Logon to <a href="http://www.identogo.com">http://www.identogo.com</a> | 7. Select <b>Option A – Electronic Submission</b>          |
| 2. Select <b>Texas</b>  | 8. Select <b>Yes, I have a FAST Fingerprint Pass</b>       |
| 3. Select <b>Online Scheduling</b>  | 9. Enter: <b>TX923605Z</b>                                 |
| 4. Select <b>English or Espanol</b>                                       | 10. Follow the prompts to enter requested information      |
| 5. Enter <b>First and Last Name</b>                                       | 11. Bring this completed form with you to your appointment |
| 6. Select <b>All Others</b>   |  |

### Section One: Qualified Entity Information

ORI#: TX923605Z

Original TCN: \_\_\_\_\_  
(if resubmission for rejected fingerprints)

Agency/Entity/Organization Name: Texas Facilities Commission

### Section Two: Applicant Name (To be completed by applicant)

Last: \_\_\_\_\_ (Please print)      First: \_\_\_\_\_ (Please print)      Middle: \_\_\_\_\_ (Please print)

### Section Three: Waiver Information (To be completed and signed by applicant)

I certify that all information I provided in relation to this criminal history record check is true and accurate. I authorize the Texas Department of Public Safety (DPS) to access Texas and Federal criminal history record information that pertains to me and disseminate that information to the designated Authorized Agency or Qualified Entity with which I am or am seeking to be employed or to serve as a volunteer, through the DPS Fingerprint-based Applicant Clearinghouse of Texas and as authorized by Texas Government Code Chapter 411 and any other applicable state or federal statute or policy.

I authorize the Texas Department of Public Safety to submit my fingerprints and other application information to the FBI for the purpose of comparing the submitted information to available records in order to identify other information that may be pertinent to the application. I authorize the FBI to disclose potentially pertinent information to the DPS during the processing of this application and for as long hereafter as may be relevant to the activity for which this application is being submitted. I understand that the FBI may also retain my fingerprints and other applicant information in the FBI's permanent collection of fingerprints and related information, where all such data will be subject to comparisons against other submissions received by the FBI and to further disseminations by the FBI as may be authorized under the Federal Privacy Act (5USC 552a(b)). I understand I am entitled to obtain a copy of any criminal history record check and challenge the accuracy and completeness of the information before a final determination is made by the Qualified Entity. I also understand the Qualified Entity may deny me access to children, the elderly, or individuals with disabilities until the criminal history record check is completed.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### Section Four: Service Center Information (To be completed by FAST Enrollment Agent)

Date Prints Taken \_\_\_\_\_ Amount Charged For Service \$41.45

Paid by:  Check  Money Order  Visa  MasterCard  Billing Acct \_\_\_\_\_

TCN: \_\_\_\_\_

I HAVE COMPARED THE GOVERNMENT-ISSUED IDENTIFICATION PRESENTED BY THE APPLICANT AND ATTEST THAT TO MY BEST DETERMINATION, I HAVE FINGERPRINTED THE SAME PERSON

E.A. Name: \_\_\_\_\_ (Please print)      E.A. Signature: \_\_\_\_\_

**EXHIBIT G**  
**TFC CONTRACT NO. 16-071-000**  
**HUB SUBCONTRACTING PLAN**



# HUB SUBCONTRACTING PLAN (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- ❖ If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
  - Section 1 – Respondent and Requisition Information
  - Section 2 a – Yes, I will be subcontracting portions of the contract
  - Section 2 b – List all the portions of work you will subcontract and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
  - Section 2 c – Yes
  - Section 4 – Affirmation
  - GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b
  
- ❖ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract\* in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
  - Section 1 – Respondent and Requisition Information
  - Section 2 a – Yes, I will be subcontracting portions of the contract
  - Section 2 b – List all the portions of work you will subcontract and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
  - Section 2 c – No
  - Section 2 d – Yes
  - Section 4 – Affirmation
  - GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b
  
- ❖ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract\* in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
  - Section 1 – Respondent and Requisition Information
  - Section 2 a – Yes, I will be subcontracting portions of the contract
  - Section 2 b – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
  - Section 2 c – No
  - Section 2 d – No
  - Section 4 – Affirmation
  - GFE Method B (Attachment B) – Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b
  
- ❖ If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:
  - Section 1 – Respondent and Requisition Information
  - Section 2 a – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
  - Section 3 – Self Performing Justification
  - Section 4 – Affirmation

\*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



# HUB SUBCONTRACTING PLAN (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders contracts,
- 32.7 percent for all special trade construction contracts,
- 23.6 percent for professional services contracts,
- 24.6 percent for all other services contracts, and
- 21 percent for commodities contracts.

### - - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

## SECTION 1 RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_  
(mm/dd/yyyy)

Enter your company's name here: \_\_\_\_\_

Requisition #: \_\_\_\_\_

**SECTION 2 SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If No continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB)

| Item #  | Subcontracting Opportunity Description | HUBs   |  | Non-HUBs   |
|---|--|--|--|--|
|   |  | Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less. | Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years. | Percentage of the contract expected to be subcontracted to non-HUBs. |
| 1   |  | %  | %  | %  |
| 2   |  | %  | %  | %  |
| 3   |  | %  | %  | %  |
| 4   |  | %  | %  | %  |
| 5   |  | %  | %  | %  |
| 6   |  | %  | %  | %  |
| 7   |  | %  | %  | %  |
| 8   |  | %  | %  | %  |
| 9   |  | %  | %  | %  |
| 10  |  | %  | %  | %  |
| 11  |  | %  | %  | %  |
| 12  |  | %  | %  | %  |
| 13  |  | %  | %  | %  |
| 14  |  | %  | %  | %  |
| 15  |  | %  | %  | %  |
| Aggregate percentages of the contract expected to be subcontracted: |  | %  | %  | %  |

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to Item d. of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract\* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

*\*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*







# HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**IMPORTANT:** If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

## SECTION B-1 SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2 MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé

- Yes (If Yes, to continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and minority or women trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

| Company Name | VID # | Date Notice Sent<br>(mm/dd/yyyy) | Did the HUB Respond?   |
|--------------|-------|----------------------------------|--|
|              |       |                                  | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
|              |       |                                  | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
|              |       |                                  | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>
- d. List two (2) minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

| Minority/Women Trade Organizations or Development Centers | Date Notice Sent<br>(mm/dd/yyyy) | Was the Notice Accepted?                                     |
|---|----------------------------------|--|
|   |                                  | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |
|   |                                  | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |

# HSP Good Faith Effort - Method B (Attachment B) *Cont.*

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

## SECTION B-4 SUBCONTRACTOR SELECTION

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page

Item #: \_\_\_\_\_ Description: \_\_\_\_\_

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

| Company Name | Texas certified HUB  | VID #<br><small>(Required if Texas certified HUB)</small> | Approximate Dollar Amount | Expected Percentage of Contract |
|--------------|--|---|---------------------------|---------------------------------|
|              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |   | \$                        | %                               |
|              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |   | \$                        | %                               |
|              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |   | \$                        | %                               |
|              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |   | \$                        | %                               |
|              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |   | \$                        | %                               |
|              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |   | \$                        | %                               |
|              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |   | \$                        | %                               |
|              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |   | \$                        | %                               |
|              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |   | \$                        | %                               |
|              | <input type="checkbox"/> - Yes <input type="checkbox"/> - No |   | \$                        | %                               |

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



# HUB Subcontracting Opportunity Notification Form

In accordance with Texas Govt Code Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

|                   |                                       |                             |
|-------------------|---------------------------------------|-----------------------------|
| <b>Section A</b>  | <b>PRIME CONTRACTOR'S INFORMATION</b> |                             |
| Company Name:     | _____                                 | State of Texas VID #: _____ |
| Point-of-Contact: | _____                                 | Phone #: _____              |
| E-mail Address:   | _____                                 | Fax #: _____                |

|                   |   |   |
|-------------------|---|---|
| <b>Section B</b>  | <b>CONTRACTING STATE AGENCY AND REQUISITION INFORMATION</b> |   |
| Agency Name:      | _____   |   |
| Point-of-Contact: | _____   | Phone #: _____                                      |
| Requisition #:    | _____   | Bid Open Date: _____<br><small>(mm/dd/yyyy)</small> |

|   |  |  |
|---|--|--|
| <b>Section C</b>  | <b>SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION</b>   |  |
| <b>1.</b><br><b>Potential Subcontractor's Bid Response Due Date:</b>                                      | <p>If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than <input type="text" value="Select"/> Central Time on: _____<br/>Date<br/><small>(mm/dd/yyyy)</small></p> <div style="border: 1px solid black; padding: 5px; font-size: small;"> <p><i>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting our bid response to the contracting agency.</i></p> <p><i>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</i></p> </div> |  |
| <b>2.</b><br><b>Subcontracting Opportunity Scope of Work:</b>   |  |  |
| <b>3.</b><br><b>Required Qualifications:</b><br><input type="checkbox"/> - Not Applicable                 |  |  |
| <b>4.</b><br><b>Bonding/Insurance Requirements:</b><br><input type="checkbox"/> - Not Applicable          |  |  |
| <b>5.</b><br><b>Location to review plans/specifications:</b><br><input type="checkbox"/> - Not Applicable |  |  |

**EXHIBIT G-1**  
**TFC CONTRACT NO. 16-071-000**  
**HSP PROGRESS ASSESSMENT REPORT**

